

Message

From: Benevento, Douglas [benevento.douglas@epa.gov]
Sent: 9/8/2019 3:30:03 PM
To: adm15.arwheeler.email [adm15.arwheeler.email@epa.gov]
CC: Molina, Michael [molina.michael@epa.gov]; Jackson, Ryan [jackson.ryan@epa.gov]
Subject: Draft Final Letter to California
Attachments: Draft Final - California Letter.docx

PRIVILEGED—DELIBERATIVE—DO NOT RELEASE

Administrator,

Attached please find a draft letter to California outlining several environmental issues that have been in the news or that have been brought to our attention through other sources (e.g. questions from Congress). Along with that category of issues we also identified several other issues that have been longstanding and have been addressed by the State some time ago. Please review it at your convenience and let me know if you have any questions. We should discuss who will sign the letter and who it will be sent to, given the nature of the issues raised sending it the Governor of California may be warranted but at a minimum it should go to CalEPA. We can have it fully prepared to early this week, after we decide who should sign it.

The letter was drafted and reviewed by multiple parties, including OGC, OW, OECA and OAR. Specifically, David Fotouhi, Lee Forsgren, Clint Woods, and Susan Bodine.

I will be in the office tomorrow afternoon and can discuss at your convenience.

Best,

Doug Benevento

Air:

- California has the worst air quality in the United States, and they have the most state implementation plans (air quality improvement plans) that have been filed with EPA that are deficient or unprovable.
- Many of these plans have been sitting with EPA for years. Each of these plans is supposed to demonstrate how it will improve air quality to meet health-based standards.
- There can be sanctions against the State for failure to comply with the Clean Air Act. The CAA allows EPA to withhold highway funds.
- We're required to allow California a grace period (18 months) before withholding highway funds. We would consult with Transportation to determine how much could be at risk for the State, but it would be significant (potentially hundreds of millions). Sanctions would only apply to the specific non-attainment area with the deficient plan.

Water: **San Francisco and Los Angeles**

- CalEPA is responsible for overseeing San Francisco's compliance with Clean Water Act and we are responsible for making certain California is doing its job.
- The City of San Francisco's combined sewer system discharges untreated and partially treated sewage into San Francisco Bay at 36 locations.
- This is a violation of the Clean Water Act that the State of California has not addressed.
- San Francisco also has a homeless problem that according to press reports is causing a water quality problem. Reports indicate human waste is being discharged into sewers that flow directly into the San Francisco bay along with drug paraphernalia.
- Los Angeles also has a significant homeless problem. As part of a larger federal delegation we are sending staff to LA next week to get a firsthand look at the extent of the problem and its environmental impact.
- In the case of Los Angeles drug paraphernalia and human waste is being deposited into storm sewers that discharge directly into the Los Angeles River and ultimately the Pacific Ocean.
- California is also running the federal water (NPDES) permitting program and we have questions about how good a job they are doing. Just one example is the City of Los Angeles which exceeded its permit limit for a contaminant which is a probable human carcinogen by 442%.
- We are preparing a letter to the State of California demanding an explanation and remedial plan for these issues. The letter will include the deficiencies in San Francisco.
- With penalties it is possible San Francisco will have as significant outlay for compliance. For example, the cost of compliance alone is estimated at \$4 billion. That doesn't include penalties which could be in the eight figures (this is my back of the envelope calculation and would ultimately be determined through the normal penalty calculation process).

Funding Provided by Congress to California

- Over the last five years California has received over \$1.16 Billion to implement the CWA including \$253.5 million in FY-18 and \$247 million in FY-19 along with \$152 million in grants.

Background on California Environmental Issues

Draft Document

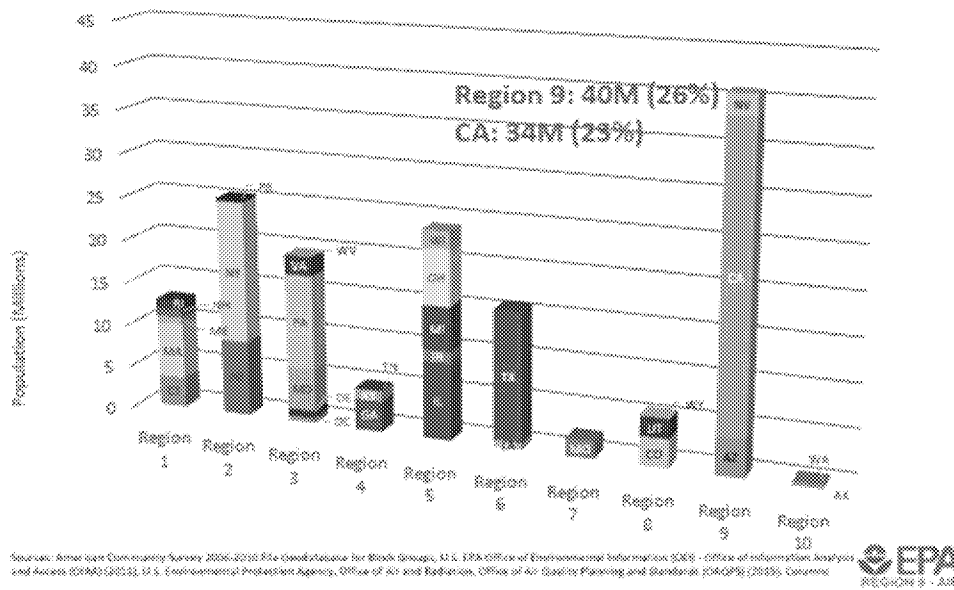
Deliberative, Do Not Distribute

Clean Air Act

Background – Air Quality in California (CA)

- CA has 35 local air districts which are responsible for regional air quality planning, monitoring, stationary source and facility permitting, and administering air quality grant programs.
- Via the California Air Resources Board (CARB), EPA gets SIP submittals from most of the air districts, most commonly:
 - prohibitory rule updates (e.g. a district updates a fugitive dust or boiler rule),
 - permit rule updates,
 - RACT SIP submittals,
 - attainment and maintenance plans.
- From the state, EPA also gets submittals for regional haze, transport, infrastructure, mobile sources, and they also have primary responsibility for attainment and maintenance plans in several of the areas.
- California has multiple areas that are nonattainment for several National Ambient Air Quality Standards (NAAQS). Summed across standards, CA has 82 nonattainment areas and 26 maintenance areas in California.
- California has among the worst air quality in the U.S. and has more than twice the population living in areas in nonattainment with the NAAQS than any other state.

Population Living in Nonattainment Areas



- SIP Backlog: Region 9 currently has 168 backloged SIP submittals. Of those, 118 are backloged SIP submittals from California agencies (70%). This represents roughly one third of EPA's total backloged SIPs (SIPs not acted upon in 18 months). Many of these California SIPs are "inactive," as they have fundamental approvability issues.

Clean Air Act Options

Ex. 5 Deliberative Process (DP)

Clean Water Act

San Francisco CSO Issues

The City of San Francisco discharges untreated and partially treated sewage into San Francisco Bay at 36 locations. The City also discharges partially treated wastewater into the Pacific Ocean. Although the Clean Water Act requires municipal sewage to be treated to certain levels and to meet water quality standards, the State of California has authorized these discharges in a permit issued under California's authorized state Clean Water Act program.

EPA considers San Francisco to be in violation of the Clean Water Act and is in the process of negotiating a consent decree with the City to put them under an enforceable obligation to meet the requirements of federal law.

San Francisco is one of the few major cities with sewers that combine stormwater and sewage flows that is not under a federal consent decree to meet the requirements of federal law (NYC is another).

The City is in the process of upgrading their sewer system and has outlined a 3-phase program of sewer upgrades. The \$2.9 billion Phase 1 is underway. All three phases will cost an estimated total of \$6.9 billion. EPA provided San Francisco Public Utility Commission a WIFIA loan of \$699M in July 2018 for the Phase 1 projects in July 2018, but much of that funding was for biosolid digestors.

CA is not the only permitting authority; parts of the Bay are marine sanctuaries, so NOAA also has a role.

San Francisco CSO Options:

Ex. 5 Deliberative Process (DP)

Considerations

Ex. 5 Deliberative Process (DP)

Talking Points

- For too long, California has stood by and allowed San Francisco to discharge raw or partially treated sewage into San Francisco Bay and the Pacific Ocean, endangering public health.
- This is simply unacceptable.
- Under this Administration, we believe in a level playing field. Just like cities in Illinois, Indiana, Ohio and elsewhere, we are stepping in and holding San Francisco accountable for their water pollution. Every city and State must comply with the Clean Water Act.

Additional background information and documentation can be provided upon request.

Violations of Section 402 NPDES permit requirements

We've been unable to identify specific examples of the State of California or any of its municipalities using storm sewers to dispose of waste on the streets or of uncontrolled discharges of waste from homes into jurisdictional waters.

However, there are numerous examples in California of flagrant violations of NPDES permits (see the attached table). Just in this past quarter we have identified 23 instances of discharges into waters of the United States that are significant violations.

For example, the City of Los Angeles exceeded its permit limit for a contaminant which is a probable human carcinogen by 442 percent and the University of Southern California exceeded its permit limit for copper by 420 percent. See highlighted items below. These are serious violations and pending an investigation could indicate a lapse in the State's obligation under their CWA authorization. As noted below Congress has provided significant funding to California to run a program that meets minimum federal requirements. Based upon this information, we may be able to question whether the state is fulfilling its obligation.

Name	Description of Violation	Highest Exceedance Percentage
The Boeing Company	Tetrachlorodibenzodioxin	2.14 million
City of El Paso de Robles	Total residual Chlorine	2.14 million
City of St. Helena	Biological Oxygen Demand - 5-day, 20 deg C	99999
Ojai Valley Sanitary District	Total recoverable Selenium	11117
Sanitary District No. 5 of Marin County	Total Cyanide	5194
City of Redding	Total residual Chlorine	1900
City of Biggs	Total general Coliform	817
Owens-Brockway Glass Container Inc.	Diethylhexyl phthalate [DEPH]	625
City of Los Angeles	Ideno[1,2,3-cd]pyrene	442
University of Southern California	Total recoverable Copper	420
Royal Catering Company	Total recoverable Copper	371.5
Stallion Springs Community Services District	Unionized Ammonia	344

Camarillo Sanitary District	Diethylhexyl phthalate [DEPH]	325
Forestville Water District	Nitrogen as Total nitrate	311
Mountain House Community Services District	Total Nitrogen as ammonia	183
Mt. Shasta	Copper, total recoverable	154.33333
San Juan Bautista	Chloride]	94.333333
West County Agency; West County Wastewater District	Biological Oxygen Demand - 5-day, 20 deg C	67
McKinleyville Community Services District	Dichlorobromomethane	59.5
City of Brawley	Total Recoverable Copper	35
City of Eureka	Nitrogen, & total ammonia	29
Paradise Irrigation District	Aluminum, total recoverable	29
City of Corona	Total Dissolved Solids	4.6666667

Federal Funding

Over the last five years California has received over **\$1.16 Billion** to implement the CWA including **\$253.5 million in FY-18 and \$247 million in FY-19**

In addition to the programmatic funding for these programs California has received over **\$152 million in categorical grants** over this time to improve compliance with CWA.

Clean Water Act Options

There are several actions that could be taken against the State of California and or the major municipalities in California for failure to properly undertake its responsibilities under environmental statutes generally and the Clean Water Act specifically.

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Federal Housing Act and TSCA Options

In 2017, Reuters reported that LA County has one of the largest populations of children with elevated blood lead levels. [[HYPERLINK "https://www.reuters.com/investigates/special-report/usa-lead-la/"](https://www.reuters.com/investigates/special-report/usa-lead-la/)] [[HYPERLINK "https://laist.com/2017/04/21/lead_poisoning_higher_than_flint_in.php"](https://laist.com/2017/04/21/lead_poisoning_higher_than_flint_in.php)]

HUD recently fined landlords of federally assisted housing in LA for lead paint violations. [[HYPERLINK "https://www.latimes.com/business/la-fi-hud-lead-paint-violations-20180628-story.html"](https://www.latimes.com/business/la-fi-hud-lead-paint-violations-20180628-story.html)]

According to its web site, lead paint has been found in properties owned by the Housing Authority of the City of Los Angeles (HACLA), a state-chartered public agency. HUD could investigate their compliance status.

Message

Sent: 9/19/2019 12:04:37 PM
Subject: FW: Responses

From: Benevento, Douglas
Sent: Thursday, September 19, 2019 8:00 AM
To: Bodine, Susan <bodine.susan@epa.gov>; Schiermeyer, Corry <schiermeyer.corry@epa.gov>
Subject: Responses

See below, the question has arisen whether San Francisco's system is effectively treating all effluent in its system. If this ok Corry will you make sure he has it.

Please see below. The President told the WH traveling press that EPA would be sending San Francisco a notice of violation soon.

Responses to questions:

We do not discuss potential enforcement actions.

If pressed: We are aware of the serious homeless problems in the major cities in CA. Our mission at EPA is to protect the environment and health of our communities, this includes those communities in CA.

Longer version if necessary; The Agency does not comment on potential enforcement actions. It is true that the City of San Francisco has serious environmental problems. They have a homeless crisis. They have serious problems with their sewer system that have not been addressed. EPA is aware of these issues and also of the larger homelessness problem in California and the potential environmental impact that is having in places like San Francisco as well as Los Angeles.

If the question arises, whether all sewage in San Francisco's system is treated the answer would be that EPA is looking into that and I shouldn't comment on any potential violations.

Message

Sent: 9/24/2019 10:34:33 PM
To: Bodine, Susan [bodine.susan@epa.gov]
CC: Forsgren, Lee [Forsgren.Lee@epa.gov]; McFaul, Jessica [mcfaul.jessica@epa.gov]; Ross, David P [ross.davidp@epa.gov]; Fotouhi, David [fotouhi.david@epa.gov]; Jackson, Ryan [jackson.ryan@epa.gov]
Subject: RE: Water TPS
Attachments: Water TPS.docx

From: Bodine, Susan <bodine.susan@epa.gov>
Sent: Tuesday, September 24, 2019 2:06 PM
To: Benevento, Douglas <benevento.douglas@epa.gov>
Cc: Forsgren, Lee <Forsgren.Lee@epa.gov>; McFaul, Jessica <mcfaul.jessica@epa.gov>; Ross, David P <ross.davidp@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>
Subject: Re: Water TPS

Untreated sewage is not allowed
Don't say violations
Are we waiting for a reply? Do you want to qualify that

Sent from my iPhone

On Sep 24, 2019, at 5:08 AM, Benevento, Douglas <benevento.douglas@epa.gov> wrote:

Lee, thanks for putting this together, particularly at 9pm last night, they were well done.

Susan, I addressed the below issues you raised and also tightened the talking points up a little to address the issue that will come up which is how did we reach this point with the State of California. I took out some of the talking points that were in the letter which didn't need to be repeated in this document.

If everyone would review this and if there are revisions necessary we can work on them.

From: Bodine, Susan <bodine.susan@epa.gov>
Sent: Tuesday, September 24, 2019 7:24 AM
To: Forsgren, Lee <Forsgren.Lee@epa.gov>
Cc: Benevento, Douglas <benevento.douglas@epa.gov>; McFaul, Jessica <mcfaul.jessica@epa.gov>; Ross, David P <ross.davidp@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>
Subject: Re: Water TPS

Lee you can't say violations
And secondary treatment is a technology standard not a water quality standard
Apparently CA has exempted SF CSOs from its ocean plan so the WQS issue is complicated
We have exceedances but they may not be violations

Sent from my iPhone

On Sep 23, 2019, at 9:00 PM, Forsgren, Lee <Forsgren.Lee@epa.gov> wrote:

Doug and Jessica,

Per your request here are draft Talking Points on the Water Letter,

Lee

<Water TPs.docx>

<Water TPs.docx>

Message

From: benevento.douglas@epa.gov [benevento.douglas@epa.gov]
Sent: 9/26/2019 5:17:32 PM
To: Jackson, Ryan [jackson.ryan@epa.gov]
Subject: Fwd: Summary of CA questions from media

Fyi. We're working on this now.

Sent from my iPhone

Begin forwarded message:

From: "Dennis, Allison" <Dennis.Allison@epa.gov>
Date: September 26, 2019 at 10:03:34 AM PDT
To: "Benevento, Douglas" <benevento.douglas@epa.gov>, "Bodine, Susan" <bodine.susan@epa.gov>, "Forsgren, Lee" <Forsgren.Lee@epa.gov>
Cc: "Ross, David P" <ross.davidp@epa.gov>, "Hull, George" <Hull.George@epa.gov>, "Egan, Patrick" <egan.patrick@epa.gov>
Subject: Summary of CA questions from media

I understand Doug, Susan and Lee will gather soon. Here is the list of all outstanding media questions to answer.. I look forward to hearing from you all on proposed responses to these questions. -Allison

Law360:

- 1) I was on the call with Susan Bodine this morning, and I'd like to request information about how many of these types of letters have been sent from the EPA (either HQ or regional offices) to states about similar issues. The Washington Post reported one issued by the Obama administration to Wisconsin, but are there others?
- 2) The letter makes reference to EPA's "concern" about the amount of human feces that ends up in the Los Angeles and San Francisco sewer systems. How does the EPA know exactly how much human feces is ending up in "nearby water" and whether that amount poses a health risk?

NYT:

- 1) Several people have told me that the exceedances in Louisiana and Texas for lead and arsenic levels are far higher than California. Can you please provide me with numbers for those two states?

E&E:

- 1) Are there any current NPDES violations by San Francisco? It sounded at one point like Susan was saying that the concern is that the permits are not adequate, rather than there being a violation, but I wanted to confirm that.
Allison's proposed response: On September 26, 2019, EPA sent a letter to California Governor Newsom regarding federal Clean Water Act and Safe Drinking Water Act deficiencies. EPA is not taking enforcement action at this time.

Courthouse News:

- 1) I was on this phone call this AM – could you clarify this statement? What exactly are the possible consequences of failing to address the issue? As I've got in my notes it includes removing the state's authority to manage their water?

Withholding federal highway funds? Similar action on this issue?

"Put together options" for wheeler. "Taking direct action is always an option on the enforcement side... on programmatic side... [if they are] not meeting basic floor needed for the authorization of delegation of authorities"

"Those are options, all of that is predicated on what they are prepared to do to address these problems."

- 2) Are you all suggesting you'll take away the state's power to manage their water? I just want to clarify.

Gannett:

- 1) The president last week was quoted in an AP story saying this:
"You know, there's tremendous pollution being put into the ocean because they're going through what's called the storm sewer that's for rainwater. And we have tremendous things that we don't have to discuss pouring into the ocean. You know there are needles, there are other things."
Susan didn't mention needles specifically so wanted to confirm with your office that that is indeed an issue.

Allison Dennis
Acting Communications Director
Office of Water
U.S. Environmental Protection Agency
Office: 202-564-1985
Cell: Ex. 6 Personal Privacy (PP)
Dennis.Allison@epa.gov

Message

Sent: 9/19/2019 11:59:05 AM
To: Bodine, Susan [bodine.susan@epa.gov]; Schiermeyer, Corry [schiermeyer.corry@epa.gov]
Subject: Responses

See below, the question has arisen whether San Francisco's system is effectively treating all

Please see below. The President told the WH traveling press that EPA would be sending San Francisco a notice of violation soon.

Responses to questions:

We do not discuss potential enforcement actions.

If pressed: We are aware of the serious homeless problems in the major cities in CA. Our mission at EPA is to protect the environment and health of our communities, this includes those communities in CA.

Longer version is appropriate if necessary; The Agency does not comment on potential enforcement actions. It is true that the City of San Francisco has serious environmental problems. They have a homeless crisis. They have serious problems with their sewer system that have not been addressed. EPA is aware of these issues and also of the larger homelessness problem in California and the potential environmental impact that is having in places like San Francisco as well as Los Angeles.

If the question arises, whether all effluent in San Francisco's sewer system is treated the answer would be that EPA is looking into that and I shouldn't comment on any potential violations.

MEMO

To: Administrator Wheeler
From: Holt Edwards and John Mark Kolb
Date: September 12, 2019
Subject: Los Angeles Homelessness Trip Debrief

Background:

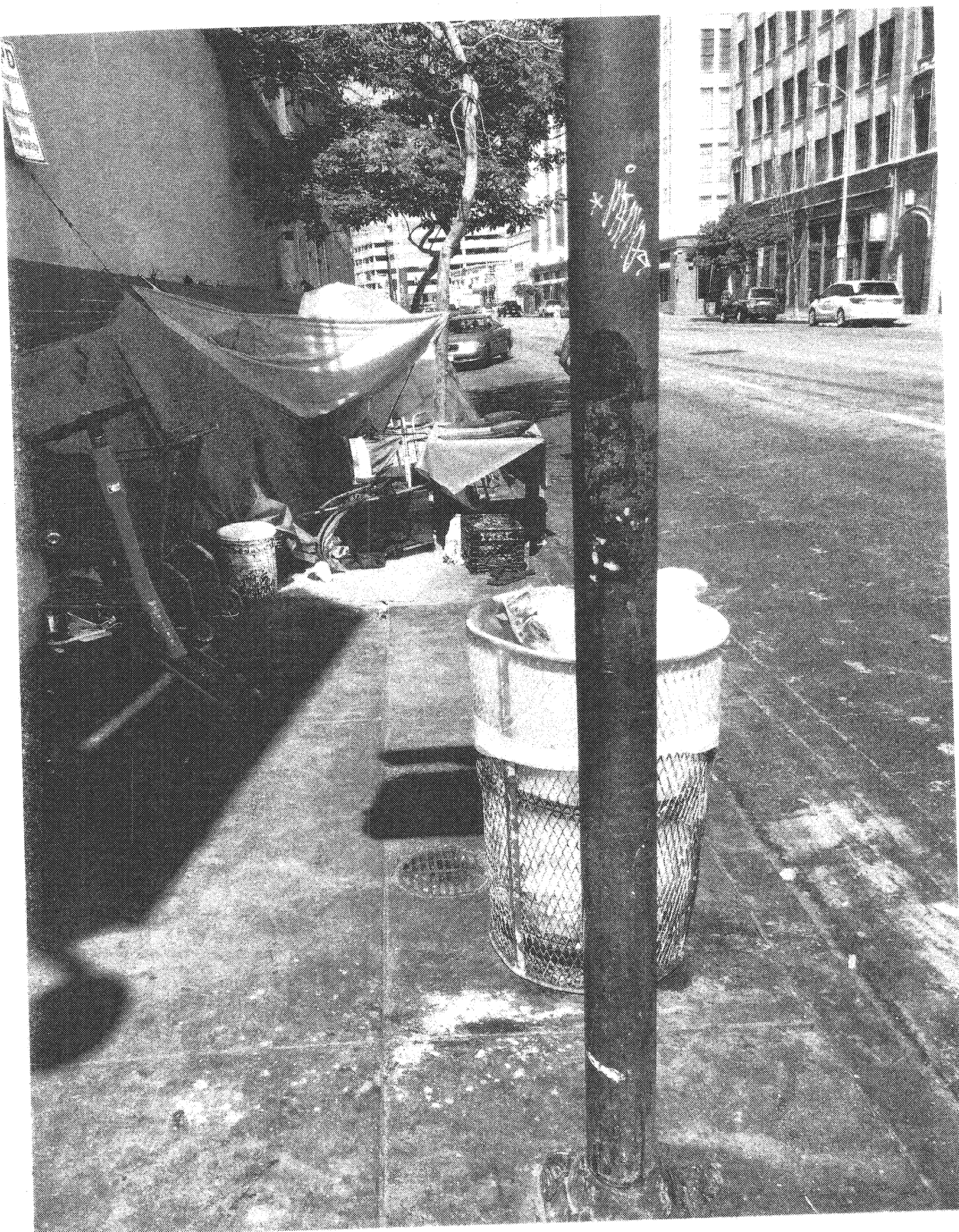
On Monday September 9th and Tuesday September 10th, we attended a White House coordinated visit to Los Angeles on behalf of the EPA to examine the homelessness crisis. Members of the White House Domestic Policy Council (DPC) convened this trip with several federal agencies to examine various aspects of the homelessness crisis. EPA's role was twofold: first, to examine the current sanitation needs for homeless residents (primarily in the Skid Row area) and second, to scout for current EPA sites that could be used for either temporary or permanent housing in the medium-to-long-term range. This trip served as a scouting trip in advance of a potential visit by Cabinet Secretaries as early as later this month. We have included several photos from our trip as well as an article from Forbes.

Monday the 9th was primarily devoted to meetings with NGO's and touring Skid Row. We have included several photos taken at Skid Row to give you a sense of the dire conditions present there. Currently, there are extremely limited amount of sanitation facilities available to the between 5,000 to 8,000 homeless residents of Skid Row; as such, we saw a high amount of human waste flowing directly in the stormwater system, which empties directly into the ocean. Due to illicit activities taking place in public facilities, the city is currently operating less than ten single-occupancy facilities with attendants in this area. In addition to human waste, there was a significant amount of garbage adjacent to the stormwater drains. That includes drug paraphernalia as seen in one of the following photographs.

On Tuesday September 10th, the majority of the day was spent with city and county officials from Los Angeles, including officials from the Los Angeles Homeless Services Authority. We toured both their Unified Homeless Response Center and several housing facilities designed as both temporary and permanent shelters. Unfortunately, we were unable to schedule any meetings or site visits with officials from the LA Department of Public Works despite numerous outreach attempts on both our part and through the White House DPC staff.

Federal Agencies in Attendance:

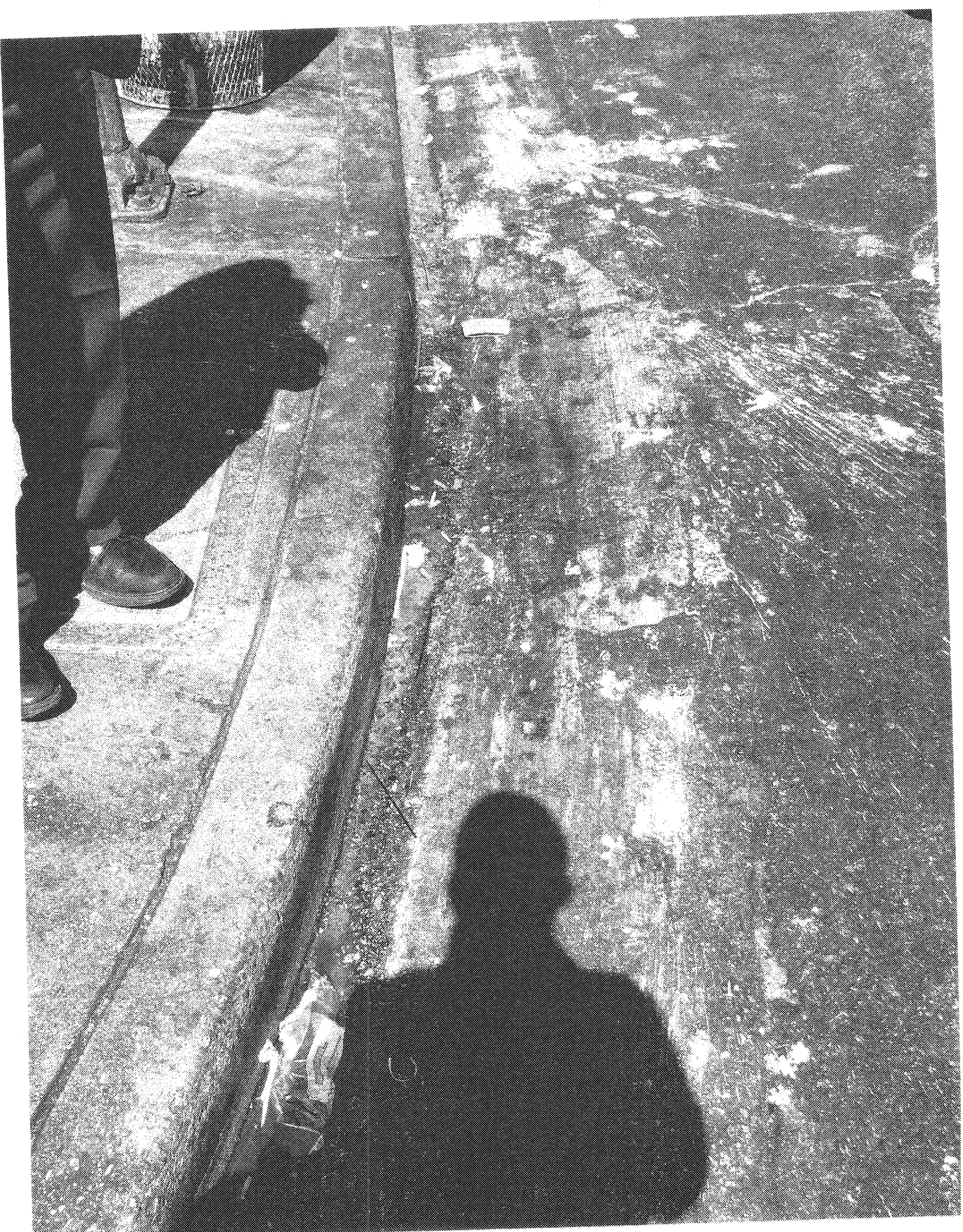
- White House Domestic Policy Council
- Department of Housing and Urban Development
- Department of Veterans Affairs
- Department of Health and Human Services
- Department of Justice
- Federal Emergency Management Agency, Department of Homeland Security
- Environmental Protection Agency
- General Services Administration











Sep 12, 2019, 10:26am

FORBES: Why California Keeps Making Homelessness Worse

Michael Shellenberger

On Tuesday, fifteen officials from the White House toured Skid Row in Los Angeles with the head of a local homeless shelter. "Four or five of them were from the Environmental Protection Agency," Rev. Andy Bales of Union Mission church told me. "That's because human waste flows into storm sewers."

California is home to some of the world's toughest environmental and public health laws, but skyrocketing homelessness has created an environmental and public health disaster. The 44,000 people living, eating, and defecating on the streets of L.A. have brought rats and medieval diseases including typhus. Garbage is everywhere. Experts fear the return of cholera and leprosy.

And homelessness is making people violent. "We are seeing behaviors from our guests that I've never seen in 33 years," said Bales. "They are so bizarre and different that I don't even feel right describing the behaviors. It's extreme violence of an extreme sexual nature. I have been doing this for 33 years and never seen anything like it."

Bales says he was one of the people who urged the US Government's Federal Emergency Management Administration (FEMA) to intervene. "We've been crying out for a National Guard-like response," said Bales, whose church provides food, showers, and shelter to 1,350 people camped nearby. In 2016 Bales lost the lower half of his leg to a flesh-eating bacteria from contamination on Skid Row.

How did things get so bad in California? The state has long prided itself on being humanistic and innovative. It is home to some of the world's largest public health philanthropies, best hospitals, and most progressive policies on mental health and drug addiction. The Democrats have a supermajority. What went wrong?

According to Bales and other experts, California made homelessness worse by making perfect housing the enemy of good housing, by liberalizing drug laws, and by opposing mandatory treatment for mental illness and drug addiction.

Other states have done a better job despite spending less money. "This isn't rocket science," said John Snook, who runs the Treatment Advocacy Center, which advises states on mental health and homelessness policy around the country. "Arizona is a red state that doesn't spend a ton on its services but is the best scenario in every aspect. World-class coordination with law enforcement. Strong oversight. They don't let people fall apart and then return to jail in 30 days like California does."

What happened in California isn't the first time that we progressives let our idealism get the better of us. To understand how the current disaster unfolded, we have to go back in time, back to the post-World War II era when progressive reformers convinced themselves and others that they could destroy the country's system for dealing with the mentally ill and replace it with a radically different and wholly unproven alternative.

A Mania for Reform

People considered the creation of state mental institutions in the 1800s to be a major progressive reform because they took the mentally ill out of prisons and hospitals and put them into a safer and kinder environment, notes the psychiatrist E. Fuller Torrey, M.D., in his devastating and critically-acclaimed 2014 history, *American Psychosis: How the Federal Government Destroyed the Mental Illness System*.

In many respects, the mental institutions were a step in the right direction, but by the middle of the 20th Century, their reputation was in tatters. They were understaffed and overcrowded. Some patients were poorly treated, even abused. Others were neglected. During World War II, Mennonites and Quakers worked in the institutions as an alternative to military service. After the war, they drew attention to the deplorable conditions.

Reformers felt they could do better. In 1945 they proposed community-based clinics not just to treat but also to prevent mental illness. They called for a federal takeover. Congressional advocates frequently invoked the US government's Manhattan Project as inspiration. If America could build a nuclear bomb in a few years, why couldn't we prevent and cure mental illness?

As Congress debated mental health reform in 1946, some were suspicious. "Men get strange ideas," said Republican congressman Clarence J. Brown of Ohio. "They decide the only way in the world they are going to solve all the problems of mankind is to do a certain thing and that their field is the most important." Many reformers believed mental illness was created by poverty and inequality and argued that solving it required creating "mentally healthy" environments, organizing tenants, and fighting landlords.

These reformers viewed mental illnesses like schizophrenia and bipolar disorder as socially constructed and not the result of biology, as most doctors believe today. They sought clinics that would "promote health" and "the development of a resilient character." They wanted clinics to treat the "totality of [a patient's] being in the totality of his relationships." The psychiatrist played a special role, the reformers said. "One might even say," wrote Francis Braceland, an influential psychiatrist who had studied with Carl Jung, "the ideal goal of the psychiatrist is to achieve wisdom."

The reformers were so confident in their convictions that they smashed the state mental institutions before creating an alternative. The reformers hyped new psychiatric drugs, which reduced the symptoms of schizophrenia, as a bridge to the new system. There was little resistance to the radical changes by existing mental institutions, whose leadership had been demoralized and discredited. And yet there was no evidence that community-based treatment

would work. Between 1948 and 1962, the test that clinic reformers pointed to as the model had not prevented a single case of mental illness or treated a single individual with schizophrenia.

But attacking mental institutions had become hugely popular. In two hugely influential 1961 books, a psychiatrist argued that mental illnesses didn't exist and a sociologist argued that the institutions themselves created mental illness. One year later, *One Flew Over the Cuckoo's Nest*, a novel about a sane but socially maladjusted man who was drugged, electro-shocked, and lobotomized by a mental institution, became a best-seller. In 1967, the film "King of Hearts" depicted psychiatric inmates after World War II as living happily once freed from their asylum. In 1975, the year "One Flew Over the Cuckoo's Nest" became a hit film, Michel Foucault argued in *Discipline and Punish* that mentally ill people had been better off in the Middle Ages when they could roam the streets without being shamed as deviant.

Over the next two decades, state mental hospitals would empty out. But the vast majority of released patients ended up homeless on the street. Congress had "encouraged the closing of state mental hospitals without any realistic plan regarding what would happen to the discharged patients," notes Dr. Torrey, "especially those who refused to take medication they needed to remain well."

And yet the reformers were becoming only more radical. "The changes I am talking about," said a leader at the new National Institute of Mental Health, "involves a redistribution of wealth and resources... society for the urban poor of such beauty and richness... nothing less than a privilege to be called poor."

But when the community mental health clinics did start operating, they tended to treat the easiest-to-treat, not the hardest. It was a trend that worsened the longer the clinics were in existence. The clinic saw "very few individuals with serious mental illnesses," reported a young psychiatrist working in Santa Monica near LA. "Instead, the patients were people from the community with various personal crises."

In the end, no more than 5% of the federally-funded clinics "made any significant contributions to the care of patients being released from state mental hospitals," finds Torrey. Financial abuses were rife, with clinics building tennis courts, swimming pools, and rooms for fads like "inhalation therapy" that did nothing for people with schizophrenia.

When critics faulted the clinics for their abuses, reformers defended themselves behind a wall of political correctness. One reformer-aligned task force that investigated the situation concluded in 1976 that "to criticize the [mental health] centers themselves for many (but not all) of their failings is to 'blame the victim!'" The Carter Administration recommended making federal support permanent and included new money to prevent mental illness by reducing "societal stresses produced by racism, poverty, sexism, ageism, and urban blight."

Republicans who had initially supported deinstitutionalization as a cost-savings measure became increasingly resentful of what they viewed as an anarchistic approach and sought to cut the budget for mental illness. But as federal support for the clinics declined, the state institutions were no longer in place to care for the homeless evicted to the streets. Everybody was in charge

and nobody was in charge. The reformers grew depressed. "The deformed creature that has developed from the original community mental health center movement does not arouse much enthusiasm in any of us who had some more grandiose visions," said one.

The problem, Torrey and other advocates for the mentally ill say, wasn't de-institutionalization but rather the failure to provide new forms of treatment. "The majority of lives were little different than they had had while hospitalized," he concludes, "and a significant number were considerably worse off." Many didn't even realize they were mentally ill, similar to some Alzheimer's patients. For decades, radical reformers sought de-institutionalization in even the most extreme situations. In 1985, a public defender got a mentally ill client released from jail even though he had been found eating his feces.

Importantly, reformers never had evidence that community-based clinics would work better than big institutions. They just assumed it in a way that is eerily similar to the way that 1960s environmentalists in California, including Governor Jerry Brown, assumed "small-is-beautiful" policies would be better for the environment. Out of hubris, the reformers sought to smash the old institution before creating a new one. Intriguingly, that's exactly what reformers would do again in California, 50 years later.

When Dogmatism Is Deadly

For decades, many progressives have claimed that homelessness is really just a kind of poverty, a manifestation of social inequality. In 1986, celebrity comedians Whoppi Goldberg, Robin Williams, and Billy Crystal held "Comic Relief," a telethon for homelessness. Throughout it, they emphasized that the homeless were just like you and me, just poorer. Today, many of California's leading homelessness advocates insist that the current crisis is due mostly to the housing shortage.

Homelessness experts and advocates disagree. "I've rarely seen a normal able-bodied able-minded non-drug-using homeless person who's just down on their luck," L.A. street doctor Susan Partovi told me. "Of the thousands of people I've worked with over 16 years, it's like one or two people a year. And they're the easiest to deal with." Rev. Bales agrees. "One hundred percent of the people on the streets are mentally impacted, on drugs, or both," he said.

Most of the time what people mean by the homelessness problem is really a drug problem and a mental illness problem. "The problem is we don't know if you're psychotic or just on meth," said Dr. Partovi. "And giving it up is very difficult. I worked in the local jail, and half of the inmates in the women's jail were Latinas in their 20s, and all were in there for something related to meth."

The people who work directly with the homeless say things worsened after California abandoned the "carrot and stick" approach toward treating the severely mentally ill and drug addicts who are repeat offenders. "The ACLU will come after me if I say the mentally ill need to be taken off the street," said Dr. Partovi, "so let me be clear that they need to be taken care of, too."

Bales says things worsened ten years ago when L.A. and other California cities rejected drug recovery (treatment) as a condition of housing. "When the 'Housing First' with a harm reduction model people came in they said 'Recovery doesn't work,'" said Bales. "But it was after that when homelessness exploded exponentially."

Bales says people have little incentive to do treatment when there is no threat of jail time. "[The Housing First harm reduction advocates] talked about new services, but they were all voluntary." Things went further in this direction with the passage of Proposition 47 in 2016, which decriminalized hard drugs and released nonviolent offenders from prison without providing after-care support. "Our guests went from 12 - 17% addicted to 50% or higher," Bales says. "Policymakers need to understand that if you allow the use, you also allow the sales, and if you allow the sales, then you allow the big guys to break your legs when you owe them money," says Bales.

Snook says that California is so unwilling to require non-voluntary mental health care that it is only now considering more extensive "conservatorship" — where a health official is given the authority to make decisions for a mentally incapacitated individual — and only after nine acts of violence against themselves or others.

"Imagine having a sick child and hoping he attacks someone once a month so somebody can do something!" said Snook. "That is so out of sync with the rest of the country, and with what mental health care looks like, that it is laughable."

Lack of shelter and leadership are factors alongside extreme progressive idealism. "It's the impact of not having a stick and not having shelter," says Bales. Snook agrees. "There's a provision that says Medicaid will now pay for beds in psychiatric hospitals," said Snook. "It's a no-brainer, but California is hemming and hawing. They don't want to involuntarily incarcerate, but it's self-defeating because you end up with mentally ill in jail because a bed isn't available."

Is the problem a lack of money? "California spends more than most places," said Snook, whose organization researches and advocates solutions for mentally ill homeless people nationally. What happened to the money from Proposition 63, the successful 2016 ballot initiative that taxed millionaires for mental health? "A Hoover Foundation audit found funds that were supposed to go to seriously mentally ill were used for yoga and trauma and other laudable things, but none for the seriously mentally ill," said Snook.

"When you look at the amount of money being spent, and then you hear the argument that we need more money? You have to ask, 'How much more?'" said Snook. "Right now it's just good money after bad. There's no oversight and no accountability."

Liberal idealism also wasted much of the \$1.2 billion that L.A. voters raised in 2016 when they voted to tax themselves to build housing for the homeless. "It was supposed to build 10,000 units but in truth will create half that because each one costs \$527,000 to \$700,000," said Bales. "They will take ten years to build, at which point 44,000 lives will have been destroyed by living on the street."

Why did progressive housing activists in L.A. insist on building such expensive apartments for so few people, so slowly, rather than quickly building cheaper units faster for 44,000 people?

"[Housing First] is a dogmatic philosophy," said Bales. "I've lost friends. One of my closest friends is attacking me for pushing for housing that costs \$11,000 instead of \$527,000 per person. He can't get that we can't provide a \$527,000 to \$700,000 apartment for each person on the street. I've been in planning meetings where people said, 'Everybody deserves a granite countertop,' but that isn't going to work for 44,000 people."

L.A.'s woke housing advocates have intimidated the city's mayor. "I think the mayor's unwilling to put out bridge shelters because of backlash from some homeless advocates," said Bales, "and is concerned about NIMBYs, and may be concerned about union workers because the shelters may not be built by the unions."

Beyond Right and Left

Despite the emergency, and in some ways because of it, homeless reformers are hopeful today that California will seek a more moderate path toward treating mental illness and drug addiction and providing shelter. "The problem is so bad and so significant that there's an opportunity now," said Snook.

Bales agrees. "In New York where they put a roof over the heads of 95% of the homeless, it took a law to change things," he said. "I thought it would take a law here, too, but maybe we can get there without a law if people continue to show political courage."

California recently awarded L.A. \$124 million for the homelessness emergency, of which L.A.'s mayor has spent \$66 million on 27 cheap, quick-to-assemble temporary shelters that can quickly get 13,000 people off the street. "I think the mayor has been fighting an uphill battle against the powers that be, and his political courage is growing," said Bales.

One sign of trouble was the resistance by some in California to receiving help from the federal government. "[Trump's] budget has proposed slashing public housing ... and eliminating community development block grant dollars," LA's mayor said. "It's totally out of step with the idea that he's here to help."

But others were more conciliatory "I am wary of any such offer from an administration that consistently demonizes vulnerable people," the governor's top homelessness advisor, Sacramento Mayor Darrell Steinberg, told me "And yet, if the federal government wants to offer resources to help bring people indoors and to offer federal facilities to shelter and house people, we should readily listen. We cannot afford to politicize an issue which needs real thought and real commitment."

Everyone I spoke to hopes that the current crisis makes all sides less dogmatic. Something like that happened at the federal level after a mentally ill man killed 20 elementary school children in 2012. Democrats and Republicans found common ground on sweeping mental health reform legislation in 2015. "It wasn't a Democrat or Republican thing," says Snook.

Steinberg, for his part, would like to see legislation codifying his "right/obligation to shelter" framework, which blends the traditional liberal emphasis on rights and care with the traditional conservative emphasis on order. "I'm open to more carrots and sticks and would be for an obligation to seek shelter. I don't think living outside is a civil right," he told me. "We back, philosophically, 'Housing First'... but if all we did was permanent housing, it would be until 2037 before we housed every person on the streets in the Bay Area."

It's hard to see any of what needs to happen as particularly partisan. "The key is focusing services on the seriously ill," argues Snook. "You provide extended care. You open up beds for when they are stable. You provide care to people to stay out of the system." What about the homeless who are not mentally ill? Focus on the hardest population first, he urged. "Once you get that population addressed, you can move on to the others. This is what New York City did. Once you get that population serviced, you're not in crisis mode anymore, and you free up money for everyone else."

I left the reporting for this column surprised by how stuck California's leaders remain in 1960s ideology and how slow they've been to react to the crisis. "It's better late than never, but still we are not treating it in the urgent manner we should," said Bales. "We're not there yet where people are really taking it seriously as an emergency." For Torrey, it all comes down to leadership. "It is not clear where the leadership for change will come from," he wrote seven years ago, "but until it emerges, change is unlikely."

Qs & As on

California's compliance with the Clean Water Act and Safe Drinking Water Act

What types of Water deficiencies did your letter outline?

- As the President said last week, the Agency is aware of the growing homelessness crisis developing in several major California cities, including Los Angeles and San Francisco. Indeed, press reports¹ indicate that “piles of human feces” on sidewalks and streets in these cities are becoming all too common. EPA is concerned about the potential water quality impacts from pathogens and other contaminants from adding additional untreated human waste entering nearby waters. Those waters are frequently used for recreation.
- San Francisco, Los Angeles and the State do not appear to be acting with urgency to mitigate the risks to human health and the environment that may result from the homelessness crisis. California is responsible for implementing appropriate municipal storm water management and waste treatment requirements as part of its assumed federal program. EPA is cognizant that the state is failing to properly implement these programs.

The President mentioned concerns with San Francisco what are those concerns?

- In addition to the “piles of human feces” on sidewalks and streets which may run directly into the San Francisco Bay from the out of control Homeless problem which in some cases or may run into storm sewers exacerbating the even more troubling concern regarding the City of San Francisco's years-long practice—allowed by CalEPA—of routinely discharging annually over one billion gallons combined sewage and stormwater into San Francisco Bay and the Pacific Ocean.
- The Clean Water Act (CWA) requires municipal sewage to be treated to certain levels and to meet water quality standards. It is far from clear that San Francisco has been meeting even primary treatment standards in during significant storm events, let alone the rigorous secondary treatment standards necessary for discharge to a water used for primary recreation like the San Francisco Bay, and may be contributing to serious violations of water quality standards.
- By failing to maintain its sewer infrastructure, the City also has allowed raw sewage to back up into homes and businesses. The City's practices endanger public health and EPA is prepared to take the necessary steps to ensure CWA compliance.
- San Francisco is one of the few major cities with sewers that combine stormwater and sewage flows that is not under a federal consent decree to meet the requirements of federal law.

- EPA is committed to helping the State address this problem. In fact, EPA provided the San Francisco Public Utility Commission a loan of \$699 million under favorable terms pursuant to authority under the Water Infrastructure Finance and Innovation Act (WIFIA) in July 2018 for biosolid digestors and other related projects. However, these projects will not bring the City into compliance.
- In order to meet the minimum standards of the CWA San Francisco must invest billions of dollars to modernize its sewer system, avoid dumping untreated and partially treated sewage into San Francisco Bay and the Pacific Ocean, and keep raw sewage inside pipes instead of homes and businesses.

That sounds like San Francisco's problem why did you send a letter to the State of California?

- The State of California has not acted with a sufficient sense of urgency to abate this public health and environmental problem under its own authorities. The State's years long approval of these discharges under its authorized Clean Water Act program with little or no oversight raises serious questions as to whether your Agency is administering this program in a manner consistent with federal law.²
- The State's lack of action in response to the homelessness crisis and San Francisco's discharges of inadequately treated sewage caused EPA to review other programs administered by CalEPA for similar concerns.
- What we discovered after a preliminary review suggests the need for more formal and in-depth EPA oversight.
 - EPA has made getting the significant noncompliance rate down a priority through its National Compliance Initiatives.
 - We also are aware of numerous violations of state-issued NPDES permits under section 402 of the Clean Water Act.
 - Just in this past quarter, we have identified 23 significant instances of discharges into waters of the United States in violation of permit limits.
 - By way of example, the City of Los Angeles exceeded its permit limit for Indeno[1,2,3-cd]pyrene (a contaminant which is reasonably anticipated to be a human carcinogen) by 442 percent;
 - The University of Southern California exceeded its permit limit for copper (a metal which can adversely affect human health and the health of aquatic life) by 420 percent
 - The Sanity District Number 5 of Marin County exceeded its permit limit for total cyanide by 5,194 percent. These are serious violations that warrant a strong review by California.

Are there other concerns about California's program?

- EPA also has concerns about CalEPA's administration and oversight of Safe Drinking Water Act (SDWA) programs and public water systems within the State. Indeed, we are

aware of numerous recent health-based violations: in just the most-recent reporting quarter of 2019, California had 202 Community Water Systems with 665 health-based violations that put at risk the drinking water of nearly 800,000 residents. These violations include:

- 67 systems with 194 serious health-based violations of arsenic levels, impacting over 101,000 residents.
- 210 lead action level exceedances in just the most recent 3-year interval at 168 PWSs, impacting over 10,000 residents.
- 2 systems with serious Ground Water Rule³ violations,⁴ impacting over 250,000 residents.
- 44 systems with 154 violations of the Stage 1 and 2 disinfection byproduct regulations, impacting almost 255,000 residents.
- 25 systems with 69 violations of radiological standards, impacting almost 12,000 residents.
- These violations call into question the State's ability to protect the public and administer its SDWA programs in a manner consistent with federal requirements.

Have you tried to help California with implementation of the program?

- California has the resources to address these problems. Apart from the State's significant tax base, California has received over \$1.16 billion of federal funds to implement CWA programs just in the last five years, including \$253.5 million in FY2018 and \$247 million in FY2019. In addition, California has received over \$152 million in categorical grants over this time to improve compliance with CWA.

³ The 2006 Ground Water Rule is a National Primary Drinking Water Regulation under the SDWA aimed at providing increased protection against microbial pathogens in public water systems that use ground water sources. *See* 71 FR 65574.

⁴ These health-based violations are associated with unaddressed "significant deficiencies" identified via an audit of the system, called a "sanitary survey," and include, for example, an opening through which bacteria could enter a well head that the system has not repaired.

Message

From: Block, Molly [block.molly@epa.gov]
Sent: 10/2/2019 10:11:19 PM
To: Bodine, Susan [bodine.susan@epa.gov]
CC: Schiermeyer, Corry [schiermeyer.corry@epa.gov]; Abboud, Michael [abboud.michael@epa.gov]; Benevento, Douglas [benevento.douglas@epa.gov]; Ross, David P [ross.davidp@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]
Subject: Re: San Francisco NPDES NOV Posted

Thanks!

Sent from my iPhone

On Oct 2, 2019, at 6:11 PM, Bodine, Susan <bodine.susan@epa.gov> wrote:

No, these violations are not related to the homelessness problem cited in the letter.

From: Block, Molly <block.molly@epa.gov>
Sent: Wednesday, October 2, 2019 6:10 PM
To: Bodine, Susan <bodine.susan@epa.gov>
Cc: Schiermeyer, Corry <schiermeyer.corry@epa.gov>; Abboud, Michael <abboud.michael@epa.gov>; Benevento, Douglas <benevento.douglas@epa.gov>; Ross, David P <ross.davidp@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>
Subject: Re: San Francisco NPDES NOV Posted

What about questions about its connectivity to the homelessness crisis?

Are these violations seen as directly related to the homelessness problem cited in the letter last week?
Is there anything to indicate how much that may have contributed or if it's more an infrastructure problem with the whole system?

Sent from my iPhone

On Oct 2, 2019, at 6:08 PM, Bodine, Susan <bodine.susan@epa.gov> wrote:

Last week's letter was an oversight letter to the State about their implementation of the Clean Water Act and the Safe Drinking Water Act. The NOV issued today was an enforcement letter issued to San Francisco, a regulated entity that has Clean Water Act violations. EPA retains its enforcement authority in authorized states.

Follow-up question: Did you consult with California?

Answer: We can't comment on the details of any enforcement action.

[internal information: Ex. 7(A)]

Ex. 7(A)

From: Schiermeyer, Corry <schiermeyer.corry@epa.gov>
Sent: Wednesday, October 2, 2019 5:56 PM
To: Bodine, Susan <bodine.susan@epa.gov>; Abboud, Michael <abboud.michael@epa.gov>
Cc: Block, Molly <block.molly@epa.gov>
Subject: RE: San Francisco NPDES NOV Posted

We got asked (and no doubt more people will ask)...about the timing of this as last weeks letter says the State has 30 days to respond to EPA and clearly the NOV went out before that time was up.

I have no doubt there is an explanation, but if someone could pull that together for us, that would be great. Also, how long have we been working on this.

Thank you!

From: Bodine, Susan <bodine.susan@epa.gov>
Sent: Wednesday, October 2, 2019 5:28 PM
To: Schiermeyer, Corry <schiermeyer.corry@epa.gov>; Abboud, Michael <abboud.michael@epa.gov>
Subject: FW: San Francisco NPDES NOV Posted

From: Hull, George <Hull.George@epa.gov>
Sent: Wednesday, October 2, 2019 5:18 PM
To: Bodine, Susan <bodine.susan@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>
Cc: Egan, Patrick <egan.patrick@epa.gov>
Subject: San Francisco NPDES NOV Posted

Susan and Larry,

The notice of violation can be found at <https://www.epa.gov/ca/city-and-county-san-francisco-npdes-notice-violation-october-2-2019>

Sent from my iPhone

Message

From: Schiermeyer, Corry [schiermeyer.corry@epa.gov]
Sent: 9/19/2019 10:40:40 AM
To: Bodine, Susan [bodine.susan@epa.gov]; Benevento, Douglas [benevento.douglas@epa.gov]
CC: McFaul, Jessica [mcfaul.jessica@epa.gov]; Abboud, Michael [abboud.michael@epa.gov]; Block, Molly [block.molly@epa.gov]
Subject: FW: Travel Pool Report from AF1

Hello Doug and Susan,

Please see below. The President told the WH traveling press that EPA would be sending San Francisco a notice of violation soon. I'm sure AAW will get asked about this today at the Press Conference and/or the hearing (there are 5 CA members on the committee)...does the following work:

We do not discuss possible enforcement action.

If pressed: We are aware of the serious homeless problems in the major cities in CA. Our mission at EPA is to protect the environment and health of our communities, this includes those communities in CA.

From: "Shear, Michael" <Michael.Shear@nytimes.com>

Date: September 18, 2019 at 7:28:47 PM PDT

Subject: Travel Pool Report from AF1

Peter Baker, the print pooler on Air Force One, calls to report the following at 10:27 pm tonight:

President Trump told a pool on Air Force One tonight that his administration will slap the city of San Francisco with a notice of environmental violations within about a week related to its homelessness problem.

He said tremendous pollution was flowing into the ocean because of waste in storm sewers, citing specifically used needles.

"It's a terrible situation — that's in Los Angeles and in San Francisco," he said. "And we're going to be giving San Francisco, they're in total violation, we're going to be giving them a notice very soon."

"EPA is going to be putting out a notice," he said. "They're in serious violation."

He added “they have to clean it up. We can’t have our cities going to hell.”

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EPA Administrator Wheeler calls out California's Environmental Protection Failure

State's homelessness crisis threatens human health and the environment

WASHINGTON – Today, U.S. Environmental Protection Agency (EPA) Administrator Andrew Wheeler sent a letter to California Governor Gavin Newsom raising several issues with the state's failure to protect Californians from degraded water, outlining deficiencies that have led to significant public health concerns in California and the steps the state must take to address them.

“California needs to fulfill its obligation to protect its water bodies and, more importantly, public health, and it should take this letter as notice that EPA is going to insist that it meets its environmental obligations,” **said EPA Administrator Andrew Wheeler**. “If California does not step up to its delegated responsibilities, then EPA will be forced to take action.”

For years, California has pushed policies that have resulted in a homelessness crisis that now threatens human health and the environment, with potential water quality impacts from pathogens and other contaminants from untreated human waste entering nearby waters. California has been responsible for implementing the water discharge permitting program under the Clean Water Act since 1973; however, the state's recent lack of urgency addressing serious issues in San Francisco resulting from lack of proper oversight and enforcement is concerning. This, among other issues identified in the administrator's letter, is a failure to properly implement federal programs and has resulted in the subsequent need for more direct EPA oversight to ensure human health and environmental protection.

Administrator Wheeler also raised concerns about the state's years long approval of the discharges of over 1 billion gallons per year of combined sewage and stormwater into San Francisco Bay and the Pacific Ocean. Despite California having abundant financial resources – which includes a significant tax base and EPA providing over \$1 billion in federal grants and a \$699 million loan through the Water Infrastructure Finance and Innovation Act – San Francisco has not come into compliance with federal clean water standards and must still invest billions of additional dollars to modernize its sewer system.

California has 30 days to provide a written response to EPA outlining in detail how it intends to address the concerns and deficiencies identified in the letter.

To read the full letter, click [here](#).

For more information about EPA's clean water programs, click [[HYPERLINK](https://www.epa.gov/environmental-topics/water-topics) "https://www.epa.gov/environmental-topics/water-topics"].

###

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###

PREDECISIONAL, DELIBERATIVE, CONFIDENTIAL

Issue:

The City of San Francisco discharges untreated and partially treated sewage into San Francisco Bay at 36 locations. The City also discharges partially treated wastewater into the Pacific Ocean. Although the Clean Water Act requires municipal sewage to be treated to certain levels and to meet water quality standards, the State of California has authorized these discharges in a permit issued under California's authorized state Clean Water Act program.

EPA considers San Francisco to be in violation of the Clean Water Act and is in the process of negotiating a consent decree with the City to put them under an enforceable obligation to meet the requirements of federal law.

San Francisco is one of the few major cities with sewers that combine stormwater and sewage flows that is not under a federal consent decree to meet the requirements of federal law (NYC is another).

The City is in the process of upgrading their sewer system and have outlined a 3-phase program of sewer upgrades. The \$2.9 billion Phase 1 is underway. All three phases will cost an estimated \$6.9 billion.

Options:

Ex. 5 Deliberative Process (DP)

Considerations:

Ex. 5 Deliberative Process (DP)

EPA gave SFPUC a WIFIA loan for the Phase 1 projects in July 2018.

CA is not the only permitting authority; parts of the Bay are marine sanctuaries, so NOAA has a role.

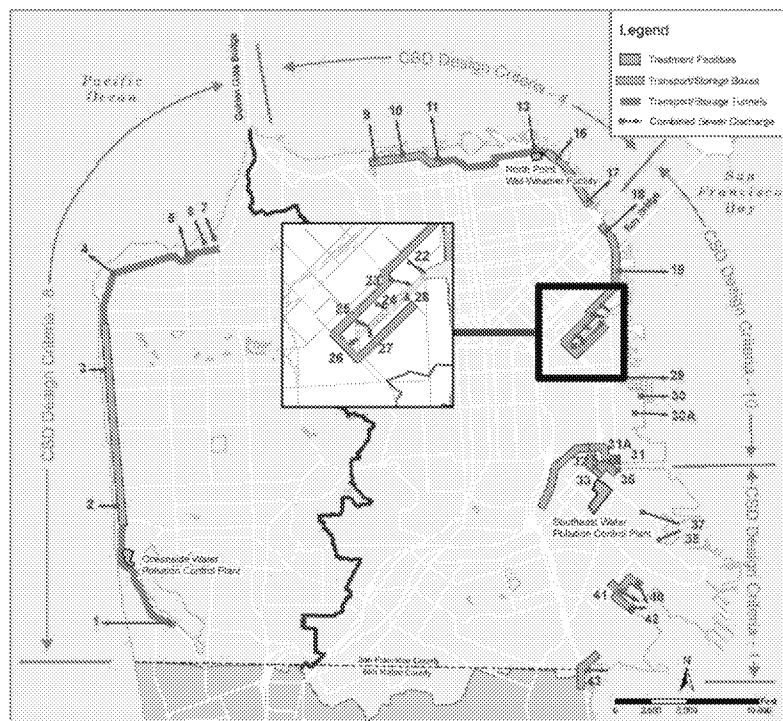
Talking Points:

- For too long, California has stood by and allowed San Francisco to discharge raw or partially treated sewage into San Francisco Bay and the Pacific Ocean, endangering public health.
- This is simply unacceptable.
- Under this Administration, we believe in a level playing field. Just like cities in Illinois, Indiana, Ohio and elsewhere, we are stepping in and holding San Francisco accountable for their water pollution. Every city and State must comply with the Clean Water Act.

Background Information and Source Documents

[[HYPERLINK "https://www.gestaltgraphics.com/docs/SFSSSummary.pdf"](https://www.gestaltgraphics.com/docs/SFSSSummary.pdf)]

[[HYPERLINK "https://sfwater.org/modules/showdocument.aspx?documentid=10005"](https://sfwater.org/modules/showdocument.aspx?documentid=10005)]



[[HYPERLINK](https://sfcontroller.org/sites/default/files/Documents/Auditing/SFPUC%20SSIP%20Audit%20Report%2003.8.18.pdf)

"<https://sfcontroller.org/sites/default/files/Documents/Auditing/SFPUC%20SSIP%20Audit%20Report%2003.8.18.pdf>"]

SF received a WIFA loan from OW of \$699M in July 2018 for biosolids digesters. [[HYPERLINK](https://www.epa.gov/newsreleases/epa-provides-699-million-san-francisco-wastewater-infrastructure-upgrades-0) "<https://www.epa.gov/newsreleases/epa-provides-699-million-san-francisco-wastewater-infrastructure-upgrades-0>"]

*"Today's nearly \$700 million WIFA water infrastructure loan reflects a core Administration priority: accelerating investment in America's water infrastructure in a way that delivers a cleaner, healthier environment and supports a thriving economy," said **EPA Acting Administrator Andrew Wheeler**. "This WIFA loan will enable San Francisco to modernize its wastewater treatment facilities while creating valuable jobs in the community."*

*"This water infrastructure loan will help San Francisco make needed upgrades and create more than 3,000 local jobs and job-training opportunities," said **Mike Stoker, EPA's Regional Administrator for the Pacific Southwest**. "EPA is proud to partner with the San Francisco Public Utilities Commission on this important project and looks forward to seeing the environmental, public health, and economic benefits it will provide."*

Message

From: Abboud, Michael [abboud.michael@epa.gov]
Sent: 10/1/2019 3:19:24 PM
To: Benevento, Douglas [benevento.douglas@epa.gov]
CC: Schiermeyer, Corry [schiermeyer.corry@epa.gov]; Bodine, Susan [bodine.susan@epa.gov]; Block, Molly [block.molly@epa.gov]; Ross, David P [ross.davidp@epa.gov]; Woods, Andrea [Woods.Andrea@epa.gov]
Subject: Re: Media question

Got it.

Sent from my iPhone

On Oct 1, 2019, at 11:18 AM, Benevento, Douglas <benevento.douglas@epa.gov> wrote:

Also our letter is clear, we looked at California's compliance rate for CWA and SDWA based upon; 1. A question he received from Rep. Nanette Barragan at a hearing he was testifying at, she raised DW issues with him, California also came to our attention because of significant issues with San Francisco's municipal storm water systems and issues raised in the press regarding the environmental impact of their homeless problem.

The letter is clear on these points. Why don't we stick to what we said in the letter which is true, accurate and defensible.

From: Schiermeyer, Corry <schiermeyer.corry@epa.gov>
Sent: Tuesday, October 1, 2019 11:13 AM
To: Bodine, Susan <bodine.susan@epa.gov>; Block, Molly <block.molly@epa.gov>; Ross, David P <ross.davidp@epa.gov>
Cc: Abboud, Michael <abboud.michael@epa.gov>; Woods, Andrea <Woods.Andrea@epa.gov>; Benevento, Douglas <benevento.douglas@epa.gov>
Subject: RE: Media question

We could use this line:

EPA is focused on protecting public health and addressing environmental deficiencies with significant impacts.. Given California's population, and significant environmental challenges, it is an appropriate subject for EPA focus.

From: Bodine, Susan <bodine.susan@epa.gov>
Sent: Tuesday, October 1, 2019 11:11 AM
To: Block, Molly <block.molly@epa.gov>; Ross, David P <ross.davidp@epa.gov>
Cc: Abboud, Michael <abboud.michael@epa.gov>; Woods, Andrea <Woods.Andrea@epa.gov>; Schiermeyer, Corry <schiermeyer.corry@epa.gov>; Benevento, Douglas <benevento.douglas@epa.gov>
Subject: RE: Media question

No, I don't have a response. I recommend repeating the argument from the letter that given CA's ample resources, large population, and significant issues, that is appropriate to expect the state to step up and address core environmental issues.

Susan

From: Block, Molly <block.molly@epa.gov>

Sent: Tuesday, October 1, 2019 11:06 AM

To: Bodine, Susan <bodine.susan@epa.gov>; Ross, David P <ross.davidp@epa.gov>

Cc: Abboud, Michael <abboud.michael@epa.gov>; Woods, Andrea <Woods.Andrea@epa.gov>;

Schiermeyer, Corry <schiermeyer.corry@epa.gov>

Subject: Media question

Susan /Dave –

Administrator Wheeler is speaking at the lead forum shortly and will be getting questions from the press. One of the members of the press tweeted the other day on non-compliant wastewater treatment plants, specifically highlighting Missouri. we'd like some info to push back on this. Do you have a response?

<image001.png>

Thanks!

Molly

Message

From: Benevento, Douglas [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=93DBA0F4F0FC41C091499009A2676F89-BENEVENTO,]
Sent: 10/1/2019 3:32:07 PM
To: Schiermeyer, Corry [schiermeyer.corry@epa.gov]; Bodine, Susan [bodine.susan@epa.gov]; Block, Molly [block.molly@epa.gov]; Ross, David P [ross.davidp@epa.gov]
CC: Abboud, Michael [abboud.michael@epa.gov]; Woods, Andrea [Woods.Andrea@epa.gov]
Subject: RE: Media question

I don't believe we reference Rep. Barragan in our letter but we have discussed her question before and after, and it did motivate our letter in part. Also, the sentence Susan provided was very good. I would put together what I have with what Susan provided as a response.

From: Schiermeyer, Corry <schiermeyer.corry@epa.gov>
Sent: Tuesday, October 1, 2019 11:21 AM
To: Benevento, Douglas <benevento.douglas@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Block, Molly <block.molly@epa.gov>; Ross, David P <ross.davidp@epa.gov>
Cc: Abboud, Michael <abboud.michael@epa.gov>; Woods, Andrea <Woods.Andrea@epa.gov>
Subject: RE: Media question

Let's stick with what Doug has...

From: Benevento, Douglas <benevento.douglas@epa.gov>
Sent: Tuesday, October 1, 2019 11:19 AM
To: Schiermeyer, Corry <schiermeyer.corry@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Block, Molly <block.molly@epa.gov>; Ross, David P <ross.davidp@epa.gov>
Cc: Abboud, Michael <abboud.michael@epa.gov>; Woods, Andrea <Woods.Andrea@epa.gov>
Subject: RE: Media question

Also our letter is clear, we looked at California's compliance rate for CWA and SDWA based upon; 1. A question he received from Rep. Nanette Barragan at a hearing he was testifying at, she raised DW issues with him, California also came to our attention because of significant issues with San Francisco's municipal storm water systems and issues raised in the press regarding the environmental impact of their homeless problem.

The letter is clear on these points. Why don't we stick to what we said in the letter which is true, accurate and defensible.

From: Schiermeyer, Corry <schiermeyer.corry@epa.gov>
Sent: Tuesday, October 1, 2019 11:13 AM
To: Bodine, Susan <bodine.susan@epa.gov>; Block, Molly <block.molly@epa.gov>; Ross, David P <ross.davidp@epa.gov>
Cc: Abboud, Michael <abboud.michael@epa.gov>; Woods, Andrea <Woods.Andrea@epa.gov>; Benevento, Douglas <benevento.douglas@epa.gov>
Subject: RE: Media question

We could use this line:

EPA is focused on protecting public health and addressing environmental deficiencies with significant impacts.. Given California's population, and significant environmental challenges, it is an appropriate subject for EPA focus.

From: Bodine, Susan <bodine.susan@epa.gov>

Sent: Tuesday, October 1, 2019 11:11 AM

To: Block, Molly <block.molly@epa.gov>; Ross, David P <ross.davidp@epa.gov>

Cc: Abboud, Michael <abboud.michael@epa.gov>; Woods, Andrea <Woods.Andrea@epa.gov>; Schiermeyer, Corry <schiermeyer.corry@epa.gov>; Benevento, Douglas <benevento.douglas@epa.gov>

Subject: RE: Media question

No, I don't have a response. I recommend repeating the argument from the letter that given CA's ample resources, large population, and significant issues, that is appropriate to expect the state to step up and address core environmental issues.

Susan

From: Block, Molly <block.molly@epa.gov>

Sent: Tuesday, October 1, 2019 11:06 AM

To: Bodine, Susan <bodine.susan@epa.gov>; Ross, David P <ross.davidp@epa.gov>

Cc: Abboud, Michael <abboud.michael@epa.gov>; Woods, Andrea <Woods.Andrea@epa.gov>; Schiermeyer, Corry <schiermeyer.corry@epa.gov>

Subject: Media question

Susan /Dave –

Administrator Wheeler is speaking at the lead forum shortly and will be getting questions from the press. One of the members of the press tweeted the other day on non-compliant wastewater treatment plants, specifically highlighting Missouri. we'd like some info to push back on this. Do you have a response?



David Schultz @davidbschultz · Sep 26

Obligatory caveats: I don't know the size of these treatment plants, so it's possible that California's 26 dump more total pollution than Missouri's 300+.

1 1 1

Show this thread



David Schultz @davidbschultz · Sep 26

...they're not. There are more than two dozen states with more wastewater treatment plants in significant non-compliance than California.

Some states have much more than 26 plants. Missouri, at the top of the list, has +300.

6	Row Labels	Count of CWPSNCStatus
7	MO	333
8	IA	248
9	TX	214
10	OH	193
11	WV	133
12	IL	128
13	WA	125
14	ND	106
15	NE	90

Thanks!

Molly

Message

From: Benevento, Douglas [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=93DBA0F4F0FC41C091499009A2676F89-BENEVENTO,]
Sent: 10/1/2019 3:27:21 PM
To: Bodine, Susan [bodine.susan@epa.gov]; Block, Molly [block.molly@epa.gov]; Ross, David P [ross.davidp@epa.gov]
CC: Abboud, Michael [abboud.michael@epa.gov]; Woods, Andrea [Woods.Andrea@epa.gov]; Schiermeyer, Corry [schiermeyer.corry@epa.gov]
Subject: RE: Media question

Yes, what Susan has is accurate and among the issues that brought CA to our attention.

From: Bodine, Susan <bodine.susan@epa.gov>
Sent: Tuesday, October 1, 2019 11:16 AM
To: Block, Molly <block.molly@epa.gov>; Ross, David P <ross.davidp@epa.gov>
Cc: Abboud, Michael <abboud.michael@epa.gov>; Woods, Andrea <Woods.Andrea@epa.gov>; Schiermeyer, Corry <schiermeyer.corry@epa.gov>; Benevento, Douglas <benevento.douglas@epa.gov>
Subject: RE: Media question

For example, in Missouri, Saint Louis and Kansas City are under multi-billion dollar consent decrees to address their combined sewer overflows and sanitary sewer overflows, but San Francisco is still discharging over a billion gallons a year of partially treated and sometimes raw sewage into the San Francisco Bay and the Pacific Ocean from over 30 locations, including next to beaches.

From: Bodine, Susan
Sent: Tuesday, October 1, 2019 11:11 AM
To: Block, Molly <block.molly@epa.gov>; Ross, David P <ross.davidp@epa.gov>
Cc: Abboud, Michael <abboud.michael@epa.gov>; Woods, Andrea <Woods.Andrea@epa.gov>; Schiermeyer, Corry <schiermeyer.corry@epa.gov>; Benevento, Douglas <benevento.douglas@epa.gov>
Subject: RE: Media question

No, I don't have a response. I recommend repeating the argument from the letter that given CA's ample resources, large population, and significant issues, that is appropriate to expect the state to step up and address core environmental issues.

Susan

From: Block, Molly <block.molly@epa.gov>
Sent: Tuesday, October 1, 2019 11:06 AM
To: Bodine, Susan <bodine.susan@epa.gov>; Ross, David P <ross.davidp@epa.gov>
Cc: Abboud, Michael <abboud.michael@epa.gov>; Woods, Andrea <Woods.Andrea@epa.gov>; Schiermeyer, Corry <schiermeyer.corry@epa.gov>
Subject: Media question

Susan /Dave –

Administrator Wheeler is speaking at the lead forum shortly and will be getting questions from the press. One of the members of the press tweeted the other day on non-compliant wastewater treatment plants, specifically highlighting Missouri. we'd like some info to push back on this. Do you have a response?



David Schultz @davidbschultz · Sep 26

Obligatory caveats: I don't know the size of these treatment plants, so it's possible that California's 26 dump more total pollution than Missouri's 300+.

1 1 1

Show this thread



David Schultz @davidbschultz · Sep 26

...they're not. There are more than two dozen states with more wastewater treatment plants in significant non-compliance than California.

Some states have much more than 26 plants. Missouri, at the top of the list, has +300.

6	Row Labels	Count of CWPSNCStatus
7	MO	333
8	IA	248
9	TX	214
10	OH	193
11	WV	133
12	IL	128
13	WA	125
14	ND	106
15	NE	90

Thanks!

Molly

Message

From: Benevento, Douglas [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=93DBA0F4F0FC41C091499009A2676F89-BENEVENTO,]
Sent: 9/30/2019 10:28:57 PM
To: Bodine, Susan [bodine.susan@epa.gov]; Schiermeyer, Corry [schiermeyer.corry@epa.gov]; Block, Molly [block.molly@epa.gov]; Ross, David P [ross.davidp@epa.gov]; Kramer, Jessica L. [kramer.jessical@epa.gov]; Drinkard, Andrea [Drinkard.Andrea@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]
CC: Abboud, Michael [abboud.michael@epa.gov]; Woods, Andrea [Woods.Andrea@epa.gov]; Jackson, Ryan [jackson.ryan@epa.gov]
Subject: RE: Press Inquiry: Giles letter to Wheeler 9-30-19.pdf

My thoughts, take them or leave them as you see fit.

Ms. Giles is focusing on different data, we have a focus on environmental problems with significant impacts, which given California's size and environmental challenges, given the public health issues California faces it is the appropriate focus. For example, 15% of California public water systems in 2018 had health-based violations, this is more than double the national average. Unlike previous administrations we are not focused on enforcement for enforcement sake, our goal is to protect public health. Another example, In 2018, the rolling average of both major and minor California facilities in significant noncompliance with their discharge permits hovered around 30%. Ms. Giles looked at major dischargers only, a subset of that universe most likely chosen because it proved the point she wanted to make.

As noted in our letter to the Governor we continue to have concern about environmental compliance in California and we will continue to hold the state accountable for its implementation of federal programs and will take direction as necessary to protect public health and the environment.

From: Bodine, Susan <bodine.susan@epa.gov>
Sent: Monday, September 30, 2019 6:13 PM
To: Schiermeyer, Corry <schiermeyer.corry@epa.gov>; Block, Molly <block.molly@epa.gov>; Ross, David P <ross.davidp@epa.gov>; Kramer, Jessica L. <kramer.jessical@epa.gov>; Drinkard, Andrea <Drinkard.Andrea@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>
Cc: Abboud, Michael <abboud.michael@epa.gov>; Woods, Andrea <Woods.Andrea@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>; Benevento, Douglas <benevento.douglas@epa.gov>
Subject: RE: Press Inquiry: Giles letter to Wheeler 9-30-19.pdf

I want Doug, Dave and Lee to weigh in on the following (is it too detailed?).

I would like to just say:

EPA is focusing on environmental problems with significant impacts. Given California's size and environmental challenges, it is an appropriate subject for EPA focus.

Also could add:

EPA is focused on protecting public health. 2018, 15% of California public water systems had health-based violations. That is more than double the national average of 7%. Ms. Giles looked at community water systems only and at all violations, which would include reporting and record-keeping violations.

EPA also is focused on improving water quality. In 2018, the rolling average of both major and minor California facilities in significant noncompliance with their discharge permits hovered around 30%. Ms. Giles looked at major dischargers only, a subset of the universe.

From: Schiermeyer, Corry <schiermeyer.corry@epa.gov>
Sent: Monday, September 30, 2019 5:43 PM
To: Bodine, Susan <bodine.susan@epa.gov>; Block, Molly <block.molly@epa.gov>; Ross, David P <ross.davidp@epa.gov>; Kramer, Jessica L. <kramer.jessical@epa.gov>; Drinkard, Andrea <Drinkard.Andrea@epa.gov>
Cc: Abboud, Michael <abboud.michael@epa.gov>; Woods, Andrea <Woods.Andrea@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>
Subject: RE: Press Inquiry: Giles letter to Wheeler 9-30-19.pdf

Thank you. We got another question on this letter from Politico. We have to respond in some way.
Either with data or generally:

It seems Ms. Giles is confusing general data with our priority, health related data that we outlined in the letter to California. As our letter states, EPA is aware of numerous recent health-based exceedances under the Safe Drinking Water Act and in order to ensure that appropriate steps are being taken to protect the 40 million Americans living in California, we are asking for a remedial plan from the state detailing the steps it's taking to address the multitude of issues raised in our letter.

From: Bodine, Susan <bodine.susan@epa.gov>
Sent: Monday, September 30, 2019 3:21 PM
To: Block, Molly <block.molly@epa.gov>; Ross, David P <ross.davidp@epa.gov>; Kramer, Jessica L. <kramer.jessical@epa.gov>; Drinkard, Andrea <Drinkard.Andrea@epa.gov>
Cc: Schiermeyer, Corry <schiermeyer.corry@epa.gov>; Abboud, Michael <abboud.michael@epa.gov>; Woods, Andrea <Woods.Andrea@epa.gov>
Subject: RE: Press Inquiry: Giles letter to Wheeler 9-30-19.pdf

But let me get data we think are more relevant first.

From: Block, Molly <block.molly@epa.gov>
Sent: Monday, September 30, 2019 3:20 PM
To: Bodine, Susan <bodine.susan@epa.gov>; Ross, David P <ross.davidp@epa.gov>; Kramer, Jessica L. <kramer.jessical@epa.gov>; Drinkard, Andrea <Drinkard.Andrea@epa.gov>
Cc: Schiermeyer, Corry <schiermeyer.corry@epa.gov>; Abboud, Michael <abboud.michael@epa.gov>; Woods, Andrea <Woods.Andrea@epa.gov>
Subject: RE: Press Inquiry: Giles letter to Wheeler 9-30-19.pdf

It looks like the letter was sent via snail mail so we won't physically received it for a while and to the generic Wheeler inbox (which Molina keeps an eye on).

So yes – we did get this from the reporter first. I can double check that it came to the generic inbox for Administrator Wheeler.

If she's comparing apples to oranges, it might be good to point that out. There's no way the reporter knows those differences...

Molly

From: Bodine, Susan
Sent: Monday, September 30, 2019 3:18 PM
To: Block, Molly <block.molly@epa.gov>; Ross, David P <ross.davidp@epa.gov>; Kramer, Jessica L. <kramer.jessical@epa.gov>; Drinkard, Andrea <Drinkard.Andrea@epa.gov>
Cc: Schiermeyer, Corry <schiermeyer.corry@epa.gov>; Abboud, Michael <abboud.michael@epa.gov>; Woods, Andrea

<Woods.Andrea@epa.gov>

Subject: RE: Press Inquiry: Giles letter to Wheeler 9-30-19.pdf

I would not respond. Did we get this letter from the reporter only or from Cynthia?

She is citing a different categories of data than is our current focus (all SDWA violations not health-based only and major dischargers not all dischargers). I asked my staff to pull the 2018 numbers for CA for the categories that are our priorities.

Susan

From: Block, Molly <block.molly@epa.gov>

Sent: Monday, September 30, 2019 3:02 PM

To: Bodine, Susan <bodine.susan@epa.gov>; Ross, David P <ross.davidp@epa.gov>; Kramer, Jessica L.

<kramer.jessical@epa.gov>; Drinkard, Andrea <Drinkard.Andrea@epa.gov>

Cc: Schiermeyer, Corry <schiermeyer.corry@epa.gov>; Abboud, Michael <abboud.michael@epa.gov>; Woods, Andrea <Woods.Andrea@epa.gov>

Subject: Press Inquiry: Giles letter to Wheeler 9-30-19.pdf

Not really sure who's best to address this... See attached letter from former OECA AA.

From: msoraghan@eenews.net <msoraghan@eenews.net>

Sent: Monday, September 30, 2019 2:51 PM

To: Press <Press@epa.gov>

Subject: Giles letter to Wheeler 9-30-19.pdf

Hi. I'm writing a story for the PM edition on this letter. Please let me know if EPA or Mr. Wheeler has any response.

Thanks, Mike Soraghan Ex. 6 Personal Privacy (PP)

Message

From: bodine.susan@epa.gov [bodine.susan@epa.gov]
Sent: 9/26/2019 4:25:31 PM
To: Dennis, Allison [Dennis.Allison@epa.gov]
CC: Ross, David P [ross.davidp@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]
Subject: Re: 10:30 AM EPA Press Briefing Call

Lee should answer. My understanding is that these data are from SDWIS, and that the answer to the question would be "yes."

Lee can you confirm?

Sent from my iPad

On Sep 26, 2019, at 9:21 AM, Dennis, Allison <Dennis.Allison@epa.gov> wrote:

Deadline is asap. Ap is asking:

Question to clarify, please: The letter refers to "exceedances" under the Safe Drinking Water Act – i.e., "665 health-based exceedances that put the drinking water of nearly 800,000 residents at risk." **Does this mean that these communities' drinking water had levels of various contaminants (arsenic, lead) that exceeded federal safety standards?**

From: Hackel, Angela <Hackel.Angela@epa.gov>
Sent: Thursday, September 26, 2019 12:08 PM
To: Dennis, Allison <Dennis.Allison@epa.gov>; Risley, David <Risley.David@epa.gov>; Fuld, John <Fuld.John@epa.gov>
Cc: Hull, George <Hull.George@epa.gov>; Egan, Patrick <egan.patrick@epa.gov>
Subject: FW: 10:30 AM EPA Press Briefing Call

Here is another one. He is working on story now, so he needs are response shortly.

Thanks,

Angela

From: Flesher, John <jflesher@ap.org>
Sent: Thursday, September 26, 2019 11:55 AM
To: Woods, Andrea <Woods.Andrea@epa.gov>
Cc: Press <Press@epa.gov>
Subject: RE: 10:30 AM EPA Press Briefing Call

Question to clarify, please: The letter refers to "exceedances" under the Safe Drinking Water Act – i.e., "665 health-based exceedances that put the drinking water of nearly 800,000 residents at risk." Does this mean that these communities' drinking water had levels of various contaminants (arsenic, lead) that exceeded federal safety standards?

Thanks,

John Flesher
AP

From: Woods, Andrea <Woods.Andrea@epa.gov>
Sent: Thursday, September 26, 2019 10:25 AM
To: Woods, Andrea <Woods.Andrea@epa.gov>
Cc: Press <Press@epa.gov>
Subject: 10:30 AM EPA Press Briefing Call

Good Morning,

Thank you for RSVP'ing for this morning's press briefing on a water quality announcement. Please see additional materials for this call attached and below.

Conference ID: [Ex. 6 Personal Privacy (PP)]
Press call-in number: [Ex. 6 Personal Privacy (PP)]
Time: 10:30 AM ET

EPA Administrator Wheeler calls out California's Environmental Protection Failure
State's homelessness crisis threatens human health and the environment

WASHINGTON – Today, U.S. Environmental Protection Agency (EPA) Administrator Andrew Wheeler sent a letter to California Governor Gavin Newsom raising several issues with the state's failure to protect Californians from degraded water, outlining deficiencies that have led to significant public health concerns in California and the steps the state must take to address them.

"California needs to fulfill its obligation to protect its water bodies and, more importantly, public health, and it should take this letter as notice that EPA is going to insist that it meets its environmental obligations," **said EPA Administrator Andrew Wheeler**. "If California does not step up to its delegated responsibilities, then EPA will be forced to take action."

For years, California has pushed policies that have resulted in a homelessness crisis that now threatens human health and the environment, with potential water quality impacts from pathogens and other contaminants from untreated human waste entering nearby waters. California has been responsible for implementing the water discharge permitting program under the Clean Water Act since 1973; however, the state's recent lack of urgency addressing serious issues in San Francisco resulting from lack of proper oversight and enforcement is concerning. This, among other issues identified in the administrator's letter, is a failure to properly implement federal programs and has resulted in the subsequent need for more direct EPA oversight to ensure human health and environmental protection.

Administrator Wheeler also raised concerns about the state's years long approval of the discharges of over 1 billion gallons per year of combined sewage and stormwater into San Francisco Bay and the Pacific Ocean. Despite California having abundant financial resources – which includes a significant tax base and EPA providing over \$1 billion in federal grants and a

\$699 million loan through the Water Infrastructure Finance and Innovation Act – San Francisco has not come into compliance with federal clean water standards and must still invest billions of additional dollars to modernize its sewer system.

California has 30 days to provide a written response to EPA outlining in detail how it intends to address the concerns and deficiencies identified in the letter.

To read the full letter, click [here](#).

For more information about EPA's clean water programs, click [here](#).

#

Andrea Woods

Deputy Press Secretary
U.S. Environmental Protection Agency
Office of Public Affairs
202-564-2010

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The information contained in this communication is intended for the use of the designated recipients named above. If the reader of this communication is not the intended recipient, you are hereby notified that you have received this communication in error, and that any review, dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify The Associated Press immediately by telephone at +1-212-621-1500 and delete this email. Thank you.

Message

Sent: 10/2/2019 9:59:43 PM
To: Schiermeyer, Corry [schiermeyer.corry@epa.gov]; Abboud, Michael [abboud.michael@epa.gov]; Benevento, Douglas [benevento.douglas@epa.gov]
CC: Block, Molly [block.molly@epa.gov]; David P Ross (ross.davidp@epa.gov) [ross.davidp@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]
Subject: RE: San Francisco NPDES NOV Posted

Last week's letter was an oversight letter to the State about their implementation of the Clean Water Act and the Safe Drinking Water Act. The NOV issued today was an enforcement letter issued to San Francisco, a regulated entity that has Clean Water Act violations. EPA retains its enforcement authority in authorized states and routinely issues enforcement letters, including notices of violation.

Follow-up question: Did you consult with California?

Answer: We can't comment on the details of any enforcement action.

[internal information:

Ex. 7(A)

From: Schiermeyer, Corry <schiermeyer.corry@epa.gov>
Sent: Wednesday, October 2, 2019 5:56 PM
To: Bodine, Susan <bodine.susan@epa.gov>; Abboud, Michael <abboud.michael@epa.gov>
Cc: Block, Molly <block.molly@epa.gov>
Subject: RE: San Francisco NPDES NOV Posted

We got asked (and no doubt more people will ask)...about the timing of this as last weeks letter says the State has 30 days to respond to EPA and clearly the NOV went out before that time was up.

I have no doubt there is an explanation, but if someone could pull that together for us, that would be great. Also, how long have we been working on this.

Thank you!

From: Bodine, Susan <bodine.susan@epa.gov>
Sent: Wednesday, October 2, 2019 5:28 PM
To: Schiermeyer, Corry <schiermeyer.corry@epa.gov>; Abboud, Michael <abboud.michael@epa.gov>
Subject: FW: San Francisco NPDES NOV Posted

From: Hull, George <Hull.George@epa.gov>
Sent: Wednesday, October 2, 2019 5:18 PM
To: Bodine, Susan <bodine.susan@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>
Cc: Egan, Patrick <egan.patrick@epa.gov>
Subject: San Francisco NPDES NOV Posted

Susan and Larry,

The notice of violation can be found at <https://www.epa.gov/ca/city-and-county-san-francisco-npdes-notice-violation-october-2-2019>

Sent from my iPhone

Message

From: Dennis, Allison [Dennis.Allison@epa.gov]
Sent: 9/26/2019 5:45:25 PM
To: Bodine, Susan [bodine.susan@epa.gov]
CC: Ross, David P [ross.davidp@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]; Hull, George [Hull.George@epa.gov]; Egan, Patrick [egan.patrick@epa.gov]
Subject: RE: Urgent: LAW360 q re: CA announcement

I received the letter from Lee.

From: Bodine, Susan <bodine.susan@epa.gov>
Sent: Thursday, September 26, 2019 1:40 PM
To: Dennis, Allison <Dennis.Allison@epa.gov>
Cc: Ross, David P <ross.davidp@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>; Hull, George <Hull.George@epa.gov>; Egan, Patrick <egan.patrick@epa.gov>
Subject: Re: Urgent: LAW360 q re: CA announcement

R9

Lee and Dave have a copy

Subject is 1979 exemption from bacteria wqs for the Oceanside treatment plant the state gave SF

Sent from my iPhone

On Sep 26, 2019, at 10:21 AM, Dennis, Allison <Dennis.Allison@epa.gov> wrote:

Great responses for both questions. Regarding the 2017 letter it would be helpful to know who it came from (OECA or OW or R9?)

From: Bodine, Susan <bodine.susan@epa.gov>
Sent: Thursday, September 26, 2019 12:50 PM
To: Dennis, Allison <Dennis.Allison@epa.gov>
Cc: Ross, David P <ross.davidp@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>; Hull, George <Hull.George@epa.gov>; Egan, Patrick <egan.patrick@epa.gov>
Subject: Re: Urgent: LAW360 q re: CA announcement

Q) EPA conducts oversight over state programs routinely. Do you want to send the 2017 letter on the CA variance for SF as an example?

Q2: Dischargers are supposed to monitor for compliance with water quality standards including bacteria standards.

Sent from my iPad

On Sep 26, 2019, at 9:26 AM, Dennis, Allison <Dennis.Allison@epa.gov> wrote:

Another one.

Law360 (deadline asap) two questions:

- 1) I was on the call with Susan Bodine this morning, and I'd like to request information about how many of these types of letters have been sent from the EPA (either HQ or regional offices) to states about similar issues. The Washington Post reported one issued by the Obama administration to Wisconsin, but are there others?
- 2) And one follow up question, the letter makes reference to EPA's "concern" about the amount of human feces that ends up in the Los Angeles and San Francisco sewer systems. How does the EPA know exactly how much human feces is ending up in "nearby water" and whether that amount poses a health risk?

From: jc.rodriguez@law360.com <jc.rodriguez@law360.com>
Sent: Thursday, September 26, 2019 11:47 AM
To: Press <Press@epa.gov>; Block, Molly <block.molly@epa.gov>
Subject: Re: EPA warning letters

And one follow up question, the letter makes reference to EPA's "concern" about the amount of human feces that ends up in the Los Angeles and San Francisco sewer systems. How does the EPA know exactly how much human feces is ending up in "nearby water" and whether that amount poses a health risk?

On Thu, Sep 26, 2019 at 11:06 AM Juan Carlos Rodriguez <jc.rodriguez@law360.com> wrote:

Hi,

I was on the call with Susan Bodine this morning, and I'd like to request information about how many of these types of letters have been sent from the EPA (either HQ or regional offices) to states about similar issues. The Washington Post reported one issued by the Obama administration to Wisconsin, but are there others?

Thank you.

--

Juan Carlos Rodriguez
Senior Environment Reporter



Legal News & Data
111 West 19th Street
5th Floor
New York, NY 10011
Office: 646-783-7197
Cell: Ex. 6 Personal Privacy (PP)



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Message

From: Dennis, Allison [Dennis.Allison@epa.gov]
Sent: 9/26/2019 6:59:09 PM
To: Bodine, Susan [bodine.susan@epa.gov]
CC: Ross, David P [ross.davidp@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]; Hull, George [Hull.George@epa.gov]; Egan, Patrick [egan.patrick@epa.gov]
Subject: Re: Urgent: LAW360 q re: CA announcement

Thanks all.

Sent from my iPhone

On Sep 26, 2019, at 2:53 PM, Bodine, Susan <bodine.susan@epa.gov> wrote:

Ok

Sent from my iPhone

On Sep 26, 2019, at 11:29 AM, Dennis, Allison <Dennis.Allison@epa.gov> wrote:

Points taken, everyone. Here's my proposed path for going forward: would you all be comfortable if we moved ahead with providing Susan's response to the reporter and then we wait to see if the reporter comes back? Then we can cite examples, if needed?

From: Bodine, Susan <bodine.susan@epa.gov>
Sent: Thursday, September 26, 2019 1:51 PM
To: Ross, David P <ross.davidp@epa.gov>
Cc: Dennis, Allison <Dennis.Allison@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>; Hull, George <Hull.George@epa.gov>; Egan, Patrick <egan.patrick@epa.gov>
Subject: Re: Urgent: LAW360 q re: CA announcement

It is on point.

And is just an example.

We do of course do oversight all the time.

Sent from my iPad

On Sep 26, 2019, at 10:46 AM, Ross, David P <ross.davidp@epa.gov> wrote:

Hi all - I'm starting to track some of the press stuff. I've been on calls all day on other matters.

I don't think we need to send the 2017 letter, because the next question will be that's only one letter, do you have others? It will be a never ending Q&A do-loop. The higher level answer is we conduct state program oversight all the time in our regions. That is a normal and indeed mandatory part of our job once we delegate a program.

Sent from my iPad

On Sep 26, 2019, at 1:39 PM, Bodine, Susan <bodine.susan@epa.gov> wrote:

R9

Lee and Dave have a copy
Subject is 1979 exemption from bacteria wqs for the
Oceanside treatment plant the state gave SF

Sent from my iPhone

On Sep 26, 2019, at 10:21 AM, Dennis, Allison
<Dennis.Allison@epa.gov> wrote:

Great responses for both questions.
Regarding the 2017 letter it would be
helpful to know who it came from
(OECA or OW or R9?)

From: Bodine, Susan
<bodine.susan@epa.gov>
Sent: Thursday, September 26, 2019
12:50 PM
To: Dennis, Allison
<Dennis.Allison@epa.gov>
Cc: Ross, David P
<ross.davidp@epa.gov>; Forsgren, Lee
<Forsgren.Lee@epa.gov>; Hull, George
<Hull.George@epa.gov>; Egan, Patrick
<egan.patrick@epa.gov>
Subject: Re: Urgent: LAW360 q re: CA
announcement

Q) EPA conducts oversight over state
programs routinely. Do you want to
send the 2017 letter on the CA variance
for SF as an example?

Q2: Dischargers are supposed to
monitor for compliance with water
quality standards including bacteria
standards.

Sent from my iPad

On Sep 26, 2019, at 9:26 AM, Dennis,
Allison <Dennis.Allison@epa.gov>
wrote:

Another one.

Law360 (deadline asap)

two questions:

- 1) I was on the call with Susan Bodine this morning, and I'd like to request information about how many of these types of letters have been sent from the EPA (either HQ or regional offices) to states about similar issues. The Washington Post reported one issued by the Obama administration to Wisconsin, but are there others?
- 2) And one follow up question, the letter makes reference to EPA's "concern" about the amount of human feces that ends up in the Los Angeles and San Francisco sewer systems. How does the EPA know exactly how much human feces is ending up in "nearby water" and whether that amount

poses a health
risk?

From:

jc.rodriguez@law360.com

<jc.rodriguez@law360.com>

Sent: Thursday,
September 26, 2019
11:47 AM

To: Press

<Press@epa.gov>;
Block, Molly
<block.molly@epa.gov>

Subject: Re: EPA
warning letters

And one follow up
question, the letter
makes reference to
EPA's "concern" about
the amount of human
feces that ends up in
the Los Angeles and San
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EPA know exactly how
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health risk?

On Thu, Sep 26, 2019 at
11:06 AM Juan Carlos
Rodriguez
<jc.rodriguez@law360.com>
wrote:

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I was on the call with
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Thank you.

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Reporter



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7197

Cell: Ex. 6 Personal Privacy (PP)



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Message

From: Egan, Patrick [egan.patrick@epa.gov]
Sent: 10/3/2019 3:45:18 PM
To: Bodine, Susan [bodine.susan@epa.gov]; Hull, George [Hull.George@epa.gov]
CC: Starfield, Lawrence [Starfield.Lawrence@epa.gov]
Subject: RE: Time Sensitive: E&E News Inquiry

Excellent. That's what I thought but wanted to be sure.

Patrick J. Egan, M.P.A.
Deputy Director of Communications
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW (MC: 2201A)
Washington, DC 20460
Office: 202-564-4059 | Cell: 202-440-3883

From: Bodine, Susan <bodine.susan@epa.gov>
Sent: Thursday, October 3, 2019 11:44 AM
To: Egan, Patrick <egan.patrick@epa.gov>; Hull, George <Hull.George@epa.gov>
Cc: Starfield, Lawrence <Starfield.Lawrence@epa.gov>
Subject: RE: Time Sensitive: E&E News Inquiry

Yes. It is a public document.

From: Egan, Patrick <egan.patrick@epa.gov>
Sent: Thursday, October 3, 2019 11:42 AM
To: Bodine, Susan <bodine.susan@epa.gov>; Hull, George <Hull.George@epa.gov>
Cc: Starfield, Lawrence <Starfield.Lawrence@epa.gov>
Subject: RE: Time Sensitive: E&E News Inquiry

Thanks. OPA wants to confirm that it's okay to release the September 9th letter along with the response.

Patrick J. Egan, M.P.A.
Deputy Director of Communications
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW (MC: 2201A)
Washington, DC 20460
Office: 202-564-4059 | Cell: 202-440-3883

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Sent: Thursday, October 3, 2019 11:27 AM
To: Hull, George <Hull.George@epa.gov>
Cc: Egan, Patrick <egan.patrick@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>
Subject: FW: Time Sensitive: E&E News Inquiry

Mostly from desk statement. Approved by Lee in OW also:

The Administrator's September 26 letter to Governor Newsom is an oversight letter to the State about their implementation of the Clean Water Act and the Safe Drinking Water Act. EPA Region 9 issued a Notice of Violation on October 2 to the San Francisco Public Utilities Commission, a regulated entity, about Clean Water Act violations identified by EPA through inspections and field visits in 2015 and 2016, and subsequently gathered information, such as monitoring data. As the notice explains, the failure to properly operate and maintain the City's sewage collection and treatment facilities creates public health risks. For example, lack of proper operation and maintenance has caused force main and pump station failures that have diverted substantial volumes of raw and partially-treated sewage to flow across beaches and into the San Francisco Bay and the Pacific Ocean. Oversight of State program implementation and oversight of regulated entities are separate issues. EPA expects San Francisco to share its concern for the protection of public health and surface water resources and to address its ongoing Clean Water Act violations with significant and meaningful measures to ensure a prompt return to full compliance. EPA retains its enforcement authority in authorized states and can act if needed. Renewal of a permit that authorizes discharges and violations of that permit also are separate issues. On September 9, 2019, the San Francisco Public Utilities Commission elevated its concerns about the draft permit renewal to the Region 9 Regional Administrator. The concerns articulated in that letter included the Commission's interpretation of the 1994 Combined Sewer Overflow Policy and an objection to permit terms requiring compliance with water quality standards. Those issues implicate matters of national consistency and are under review by EPA.

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From: Hull, George <Hull.George@epa.gov>
Sent: Thursday, October 3, 2019 8:53 AM
To: Bodine, Susan <bodine.susan@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>
Cc: Egan, Patrick <egan.patrick@epa.gov>
Subject: Time Sensitive: E&E News Inquiry

Susan and Larry,

Late yesterday, OPA sent us the inquiry below from E&E News related to San Francisco wastewater. Region 9 recommended that OECA and OW are better positioned to respond. The reporter is asking for our response by 11:30 am this morning. I sent to WED late last night. Joe Theis responded this morning. He recommended: "We should refer the permitting question to OW. With respect to the NOV questions, I would recommend that we provide the standard response that we do not comment on ongoing enforcement matters. I assume you will be checking in with Susan this morning on this, let us know if she thinks a different response is appropriate."

I'm on my way into the office and will see you at our 9:30 meeting. Thanks, George

E&E Inquiry:

Hope you're doing well. I'm working on a follow-up article to EPA Admin. Wheeler's letter to California last week. In particular, I'm focusing on the ongoing permit review for the Oceanside Wastewater Treatment Plant which was mentioned a few times in the background press briefing as an example of EPA's concerns regarding California's oversight. I had a few questions.

- On Sept. 11 EPA staff told the San Francisco Regional Water Quality Control Board that the agency supported the permit as drafted. (You can view a livestream of that meeting here: <https://cal-span.org/unipage/index.php?site=cal-span&owner=RWQCB-SF&date=2019-09-11>). The board approved the permit largely unedited. What changed between Sept. 11 and Sept. 26, when the senior EPA official told reporters the agency was concerned about California's oversight of that specific permit and San Francisco's efforts to push back against it?
- Why hasn't EPA signed off on the Oceanside permit?

- Who at EPA is reviewing the permit? Is this issue still at Region 9 or has it been transferred to headquarters?
- I'm also curious about the timing of EPA Region 9's Notice of Violation against San Francisco PUC issued today for a slew of wastewater-related concerns. How long has EPA been working on that notice? I was under the impression that California had 30 days to respond to Admin. Wheeler's letter before EPA took further action.
- Why weren't the Oceanside violations included in R9's notice today addressed as part of the permitting process for that treatment plant?

Message

From: Hill, Randy [Hill.Randy@epa.gov]
Sent: 9/30/2019 9:53:09 PM
To: Bodine, Susan [bodine.susan@epa.gov]
Subject: RE: Press Inquiry: Giles letter to Wheeler 9-30-19.pdf

A couple of things—

Ex. 5 Deliberative Process (DP)

Randolph L. ("Randy") Hill
Director, Enforcement Targeting and Data Division
U.S. EPA (2222A)
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460
(202) 564-5474
(202) 564-0027 (FAX)
hill.randy@epa.gov

Confidential: This transmission may contain deliberative, attorney-client, attorney work product or otherwise privileged material. Do not release under FOIA without appropriate review. If this message has been received by you in error, you are instructed to delete this message from your machine and all storage media whether electronic or hard copy.

From: Bodine, Susan <bodine.susan@epa.gov>
Sent: Monday, September 30, 2019 5:14 PM
To: Hill, Randy <Hill.Randy@epa.gov>
Subject: RE: Press Inquiry: Giles letter to Wheeler 9-30-19.pdf

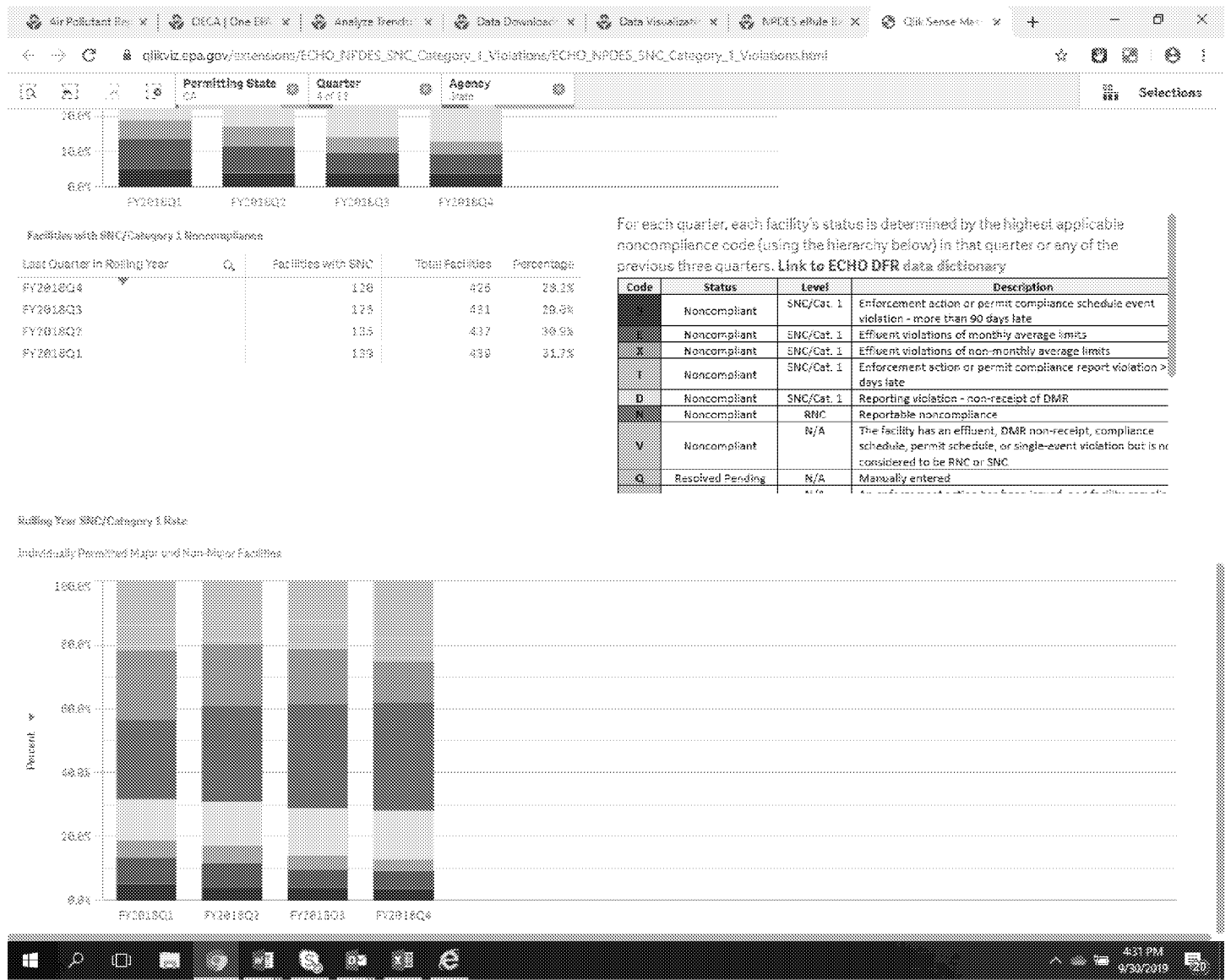
ECHO data math:

CA only total # NPDES facilities: 243 majors and 208 nonmajors (individual permits) = 451
Majors in SNC in 2018: 45
Minors with Cat 1 violations in 2018: 105 (is that a subset of the individual permitted nonmajor universe?)
So, 150 facilities in SNC out of 451 = 33%.

Is that correct?

From: Hill, Randy <Hill.Randy@epa.gov>
Sent: Monday, September 30, 2019 4:33 PM
To: Bodine, Susan <bodine.susan@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Hindin, David <Hindin.David@epa.gov>; Dombrowski, John <Dombrowski.John@epa.gov>
Cc: Shiffman, Cari <Shiffman.Cari@epa.gov>; Mirza, Sabah <Mirza.Sabah@epa.gov>
Subject: RE: Press Inquiry: Giles letter to Wheeler 9-30-19.pdf

The rate you were probably shown before was the “4 Quarter rolling average” rate. The rolling average in 2018 hovered around 30% (see below). What I abstracted before is the actual rate each quarter (without consideration of prior quarters, as you would do with a rolling average).



Randolph L. ("Randy") Hill
 Director, Enforcement Targeting and Data Division
 U.S. EPA (2222A)
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 Washington, D.C. 20460
 (202) 564-5474
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hill.randy@epa.gov

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From: Bodine, Susan <bodine.susan@epa.gov>
Sent: Monday, September 30, 2019 4:17 PM
To: Hill, Randy <Hill.Randy@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Hindin, David <Hindin.David@epa.gov>; Dombrowski, John <Dombrowski.John@epa.gov>
Cc: Shiffman, Cari <Shiffman.Cari@epa.gov>; Mirza, Sabah <Mirza.Sabah@epa.gov>
Subject: RE: Press Inquiry: Giles letter to Wheeler 9-30-19.pdf

What was the SNC rate for CA last year (both majors and minors together). I thought from our VTCs it was about 34%. Is that correct?

From: Hill, Randy <Hill.Randy@epa.gov>
Sent: Monday, September 30, 2019 3:57 PM
To: Bodine, Susan <bodine.susan@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Hindin, David <Hindin.David@epa.gov>; Dombrowski, John <Dombrowski.John@epa.gov>
Cc: Shiffman, Cari <Shiffman.Cari@epa.gov>; Mirza, Sabah <Mirza.Sabah@epa.gov>
Subject: RE: Press Inquiry: Giles letter to Wheeler 9-30-19.pdf

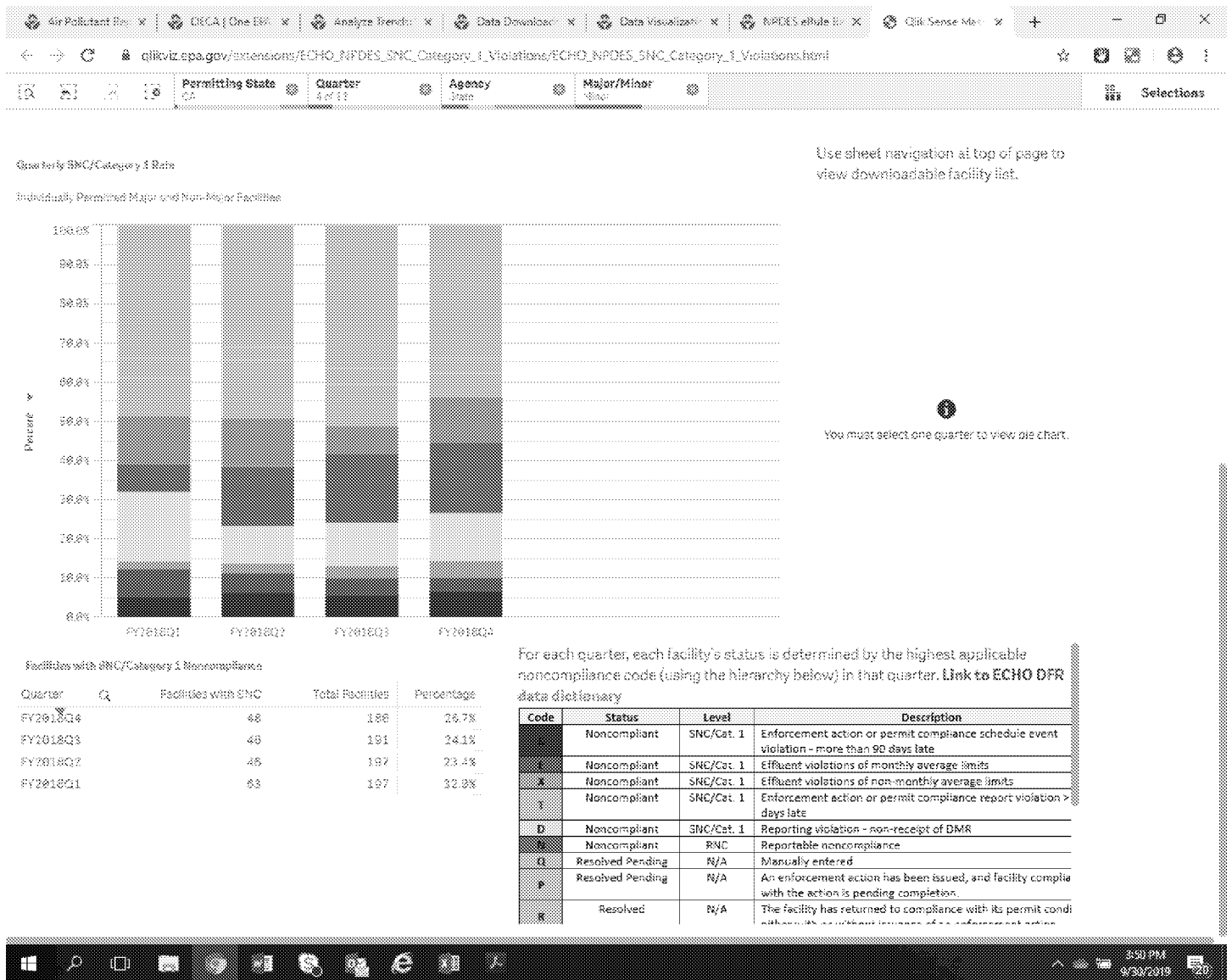
It would take a couple of hours at least to recreate this analysis for all states and then create a chart that compares states like the original charts. The data aren't stored this way in ECHO, so you'd need to run a report for each state by hand.

I've pulled the results for CA alone.

PWSs w/health-based violations in FY 2018 15% (national average 7%)
PWS w/acute health-based violations in FY 2018 4.26% (national avg. 1.55%)
Note: these numbers include all PWSs; Cynthia looked at Community Water Systems only.

For SNC, the rate for minors in FY 2018 fluctuates between 25% and 32%, depending on the quarter. See the screen shot below. However, I would seriously caveat these results. There are clearly more than 46-63 minor dischargers in California. We know there are long-standing data transfer issues between CA and ICIS-NPDES.

Note: The numbers below cannot be easily replicated by the public. We stopped publishing SNC rates for non-majors on the ECHO Dashboards in 2015 due to changes in State reporting related to the e-Reporting rule.



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From: Bodine, Susan <bodine.susan@epa.gov>
Sent: Monday, September 30, 2019 3:16 PM
To: Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Hindin, David <Hindin.David@epa.gov>; Dombrowski, John <Dombrowski.John@epa.gov>; Hill, Randy <Hill.Randy@epa.gov>
Cc: Shiffman, Cari <Shiffman.Cari@epa.gov>; Mirza, Sabah <Mirza.Sabah@epa.gov>
Subject: FW: Press Inquiry: Giles letter to Wheeler 9-30-19.pdf

I don't know if we want to respond. But, could you pull the 2018 data on CA for health-based violations (not all violations) and for SNC not majors only?

Susan

From: Block, Molly <block.molly@epa.gov>
Sent: Monday, September 30, 2019 3:02 PM
To: Bodine, Susan <bodine.susan@epa.gov>; Ross, David P <ross.davidp@epa.gov>; Kramer, Jessica L. <kramer.jessical@epa.gov>; Drinkard, Andrea <Drinkard.Andrea@epa.gov>
Cc: Schiermeyer, Corry <schiermeyer.corry@epa.gov>; Abboud, Michael <abboud.michael@epa.gov>; Woods, Andrea <Woods.Andrea@epa.gov>
Subject: Press Inquiry: Giles letter to Wheeler 9-30-19.pdf

Not really sure who's best to address this... See attached letter from former OECA AA.

From: msoraghan@eenews.net <msoraghan@eenews.net>
Sent: Monday, September 30, 2019 2:51 PM
To: Press <Press@epa.gov>
Subject: Giles letter to Wheeler 9-30-19.pdf

Hi. I'm writing a story for the PM edition on this letter. Please let me know if EPA or Mr. Wheeler has any response.

Thanks, Mike Soraghan

Ex. 6

Message

From: Bodine, Susan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8C2CC6086FCC44C3BE6B5D32B262D983-BODINE, SUS]
Sent: 9/26/2019 4:50:22 PM
To: Dennis, Allison [Dennis.Allison@epa.gov]
CC: Ross, David P [ross.davidp@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]; Hull, George [Hull.George@epa.gov]; Egan, Patrick [egan.patrick@epa.gov]
Subject: Re: Urgent: LAW360 q re: CA announcement

EPA conducts oversight over state programs routinely. Do you want to send the 2017 letter on the CA variance for SF as an example?

Dischargers are supposed to monitor for compliance with water quality standards including bacteria standards.

Sent from my iPad

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Another one.

Law360 (deadline asap) two questions:

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From: jc.rodriguez@law360.com <jc.rodriguez@law360.com>
Sent: Thursday, September 26, 2019 11:47 AM
To: Press <Press@epa.gov>; Block, Molly <block.molly@epa.gov>
Subject: Re: EPA warning letters

And one follow up question, the letter makes reference to EPA's "concern" about the amount of human feces that ends up in the Los Angeles and San Francisco sewer systems. How does the EPA know exactly how much human feces is ending up in "nearby water" and whether that amount poses a health risk?

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Thank you.

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Message

From: Bodine, Susan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8C2CC6086FCC44C3BE6B5D32B262D983-BODINE, SUS]
Sent: 10/3/2019 3:35:08 PM
To: Corry Schiermeyer (schiermeyer.corry@epa.gov) [schiermeyer.corry@epa.gov]; Abboud, Michael [abboud.michael@epa.gov]; Block, Molly [block.molly@epa.gov]
CC: Benevento, Douglas [benevento.douglas@epa.gov]
Subject: RE: Time Sensitive: E&E News Inquiry

Heard from Doug – he does not have time to review so go ahead and send.

From: Bodine, Susan
Sent: Thursday, October 3, 2019 11:29 AM
To: Corry Schiermeyer (schiermeyer.corry@epa.gov) <schiermeyer.corry@epa.gov>; Abboud, Michael <abboud.michael@epa.gov>; Block, Molly <block.molly@epa.gov>
Cc: Benevento, Douglas <benevento.douglas@epa.gov>
Subject: FW: Time Sensitive: E&E News Inquiry

See below. I know they set an 11:30 deadline. I did not hear back from Doug. He is copied here is he wants to chime in.

Susan

From: Bodine, Susan
Sent: Thursday, October 3, 2019 11:27 AM
To: Hull, George <Hull.George@epa.gov>
Cc: Egan, Patrick <egan.patrick@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>
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- Why weren't the Oceanside violations included in R9's notice today addressed as part of the permitting process for that treatment plant?

Message

From: Bodine, Susan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8C2CC6086FCC44C3BE6B5D32B262D983-BODINE, SUS]
Sent: 10/3/2019 3:20:35 PM
To: Hull, George [Hull.George@epa.gov]; Starfield, Lawrence [Starfield.Lawrence@epa.gov]
CC: Egan, Patrick [egan.patrick@epa.gov]
Subject: RE: Time Sensitive: E&E News Inquiry

I am coordinating with Lee in OW. Will have a joint response shortly

From: Hull, George <Hull.George@epa.gov>
Sent: Thursday, October 3, 2019 8:53 AM
To: Bodine, Susan <bodine.susan@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>
Cc: Egan, Patrick <egan.patrick@epa.gov>
Subject: Time Sensitive: E&E News Inquiry

Susan and Larry,

Late yesterday, OPA sent us the inquiry below from E&E News related to San Francisco wastewater. Region 9 recommended that OECA and OW are better positioned to respond. The reporter is asking for our response by 11:30 am this morning. I sent to WED late last night. Joe Theis responded this morning. He recommended: "We should refer the permitting question to OW. With respect to the NOV questions, I would recommend that we provide the standard response that we do not comment on ongoing enforcement matters. I assume you will be checking in with Susan this morning on this, let us know if she thinks a different response is appropriate."

I'm on my way into the office and will see you at our 9:30 meeting. Thanks, George

E&E Inquiry:

Hope you're doing well. I'm working on a follow-up article to EPA Admin. Wheeler's letter to California last week. In particular, I'm focusing on the ongoing permit review for the Oceanside Wastewater Treatment Plant which was mentioned a few times in the background press briefing as an example of EPA's concerns regarding California's oversight. I had a few questions.

- On Sept. 11 EPA staff told the San Francisco Regional Water Quality Control Board that the agency supported the permit as drafted. (You can view a livestream of that meeting here: <https://cal-span.org/unipage/index.php?site=cal-span&owner=RWQCB-SF&date=2019-09-11>). The board approved the permit largely unedited. What changed between Sept. 11 and Sept. 26, when the senior EPA official told reporters the agency was concerned about California's oversight of that specific permit and San Francisco's efforts to push back against it?
- Why hasn't EPA signed off on the Oceanside permit?
- Who at EPA is reviewing the permit? Is this issue still at Region 9 or has it been transferred to headquarters?
- I'm also curious about the timing of EPA Region 9's Notice of Violation against San Francisco PUC issued today for a slew of wastewater-related concerns. How long has EPA been working on that notice? I was under the impression that California had 30 days to respond to Admin. Wheeler's letter before EPA took further action.
- Why weren't the Oceanside violations included in R9's notice today addressed as part of the permitting process for that treatment plant?

Message

From: Hackel, Angela [Hackel.Angela@epa.gov]
Sent: 9/26/2019 3:58:13 PM
To: Press [Press@epa.gov]
Subject: FW: 10:30 AM EPA Press Briefing Call

Just wanted to confirm that I should take this and the other follow up questions to the program offices. Just want to confirm 3F is not handling.

Thanks!

Angela

From: Flesher, John <jflesher@ap.org>
Sent: Thursday, September 26, 2019 11:55 AM
To: Woods, Andrea <Woods.Andrea@epa.gov>
Cc: Press <Press@epa.gov>
Subject: RE: 10:30 AM EPA Press Briefing Call

Question to clarify, please: The letter refers to “exceedances” under the Safe Drinking Water Act – i.e., “665 health-based exceedances that put the drinking water of nearly 800,000 residents at risk.” Does this mean that these communities’ drinking water had levels of various contaminants (arsenic, lead) that exceeded federal safety standards?

Thanks,

John Flesher
AP

From: Woods, Andrea <Woods.Andrea@epa.gov>
Sent: Thursday, September 26, 2019 10:25 AM
To: Woods, Andrea <Woods.Andrea@epa.gov>
Cc: Press <Press@epa.gov>
Subject: 10:30 AM EPA Press Briefing Call

Good Morning,

Thank you for RSVP’ing for this morning’s press briefing on a water quality announcement. Please see additional materials for this call attached and below.

Conference ID: Ex. 6 Personal Privacy (PP)
Press call-in number: Ex. 6 Personal Privacy (PP)
Time: 10:30 AM ET

EPA Administrator Wheeler calls out California’s Environmental Protection Failure
State’s homelessness crisis threatens human health and the environment

WASHINGTON – Today, U.S. Environmental Protection Agency (EPA) Administrator Andrew Wheeler sent a letter to California Governor Gavin Newsom raising several issues with the state’s failure to protect Californians from degraded water, outlining deficiencies that have led to significant public health concerns in California and the steps the state must take to address them.

“California needs to fulfill its obligation to protect its water bodies and, more importantly, public health, and it should take this letter as notice that EPA is going to insist that it meets its environmental obligations,” **said EPA Administrator Andrew Wheeler**. “If California does not step up to its delegated responsibilities, then EPA will be forced to take action.”

For years, California has pushed policies that have resulted in a homelessness crisis that now threatens human health and the environment, with potential water quality impacts from pathogens and other contaminants from untreated human waste entering nearby waters. California has been responsible for implementing the water discharge permitting program under the Clean Water Act since 1973; however, the state’s recent lack of urgency addressing serious issues in San Francisco resulting from lack of proper oversight and enforcement is concerning. This, among other issues identified in the administrator’s letter, is a failure to properly implement federal programs and has resulted in the subsequent need for more direct EPA oversight to ensure human health and environmental protection.

Administrator Wheeler also raised concerns about the state’s years long approval of the discharges of over 1 billion gallons per year of combined sewage and stormwater into San Francisco Bay and the Pacific Ocean. Despite California having abundant financial resources – which includes a significant tax base and EPA providing over \$1 billion in federal grants and a \$699 million loan through the Water Infrastructure Finance and Innovation Act – San Francisco has not come into compliance with federal clean water standards and must still invest billions of additional dollars to modernize its sewer system.

California has 30 days to provide a written response to EPA outlining in detail how it intends to address the concerns and deficiencies identified in the letter.

To read the full letter, click [here](#).

For more information about EPA’s clean water programs, click [here](#).

###

Andrea Woods

Deputy Press Secretary
U.S. Environmental Protection Agency
Office of Public Affairs
202-564-2010

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National Mining Association
September 25, 2019
Remarks for Delivery

- Good morning, it's a pleasure to be with you today.
- Thank you, **Phil**, for the warm welcome.
- We have been very busy at the EPA.
- And we've had some important regulatory wins as well.
- As the previous administration was on their way out the door, they tried to push through a federal financial assurance rule on the **hardrock mining sector**.
- It was overly burdensome and duplicative because many states already have financial responsibility protections in place.
- So we announced in December of 2017 that we will NOT finalize the financial responsibility requirements.
- We were delighted to see that the D.C. Circuit Court of Appeals upheld our decision earlier this summer.
- And while we are removing undue regulatory burdens, we are also enforcing the law.
- Yesterday, we sent a letter to California notifying them that we are taking action to ensure the state complies with the nation's air quality standards.
- California has the worst air quality in the nation.
- It has 82 nonattainment areas with 34 million people living in places that do not meet our NAAQS standards — that's more than twice as many people as any other state in the country.
- But instead of carrying out its most basic responsibilities under the Clean Air Act, California would rather try and impose its radical agenda on the rest of the nation.
- We will not be intimidated. We will uphold the law.

We are delivering on President Trump's regulatory reform agenda.

- EPA has finalized **46 deregulatory actions under President Trump**, saving Americans more than **\$3.7 billion dollars** in regulatory costs.
- We have an additional **45 actions** in development projected to save billions more.
- And a recent report found that we were the top agency in fulfilling President Trump's two-for-one executive order.
- In two years, EPA cut **26 regulations** and created just **four new ones**.
- This climate of regulatory certainty is breathing new life into local economies around the country.

I'll highlight a few examples today, starting with an important update.

We plan to send the final **Mercury and Air Toxics Standards (MATS)** rule to OMB for interagency review very soon.

- We are on track to issue a final rule by the end of this year.
- The MATS proposal had two main parts:
 - a proposal to correct flaws in the 2016 supplemental cost finding
 - and the proposed results of the risk and technology review (RTR) confirming that no changes are needed to the emission limits.
- After properly evaluating the costs and benefits — as EPA was directed to do by the Supreme Court — the Agency proposed to determine that it is not “appropriate and necessary” to regulate HAP emissions from power plants under section 112 of the Clean Air Act.

- With estimated compliance costs **three times higher** than estimated benefits, it is simply not “appropriate and necessary” to regulate these hazardous air pollutants from power plants.
- EPA’s proposed interpretation of the applicable laws would not roll back or alter any of the emission standards under MATS.
- The RTR ensures that MATS stays in place, and that EPA is meeting the statutory requirements set out by Congress.
- We are following the law and the decision of the U.S. Supreme Court.

The same can be said for our **Affordable Clean Energy (ACE) Rule**.

- I’m proud to say that we delivered on the President’s promise to repeal and replace the Clean Power Plan.
- Our new ACE Rule will continue our nation’s environmental progress, and it will do so *legally* and with proper respect for the states.

The ACE rule will be implemented in three steps:

STEP 1: EPA sets the Best System of Emission Reduction for existing power plants.

- To be clear, EPA is not setting a presumptive standard of performance. States will be given the flexibility to design a plan that best suits their local environmental and energy needs.

STEP 2: Each state will have three years to submit a plan that establishes a standard of performance that falls within EPA’s guidelines.

- This timeline is in line with other state planning deadlines under the Clean Air Act.

STEP 3: Once a state plan is submitted, EPA will have 12 months to approve it. We will work closely with the states throughout the process, and we encourage you to do the same.

The important thing is that we affirmatively stated that EPA cannot go beyond the Obama building block one.

The contrast between our approach and the Green New Deal couldn't be more obvious.

- We are working cooperatively with the states to provide an affordable, reliable, and diverse supply of energy – rather than telling Americans what type of energy they can use, or how they can travel, or even what they can eat.
- That's not an exaggeration.
- Here's what the former chief of staff to Representative Ocasio-Cortez said recently about the Green New Deal: "The interesting thing about the Green New Deal is it wasn't originally a climate thing at all. We really think of it as a how-do-you-change-the-entire-economy thing."
- At least they're being honest.

We can't deny the fact that fossil fuels will continue to be a key part of the energy mix both at home and abroad.

- Coal use is rising worldwide, driven in large part by India, China, and other Asian nations.
- Here in the U.S., we mine and use our coal in a cleaner fashion than our international competitors.
- Rather than punishing U.S. production and yielding the marketplace to Chinese coal, which is what the Obama Clean Power Plan did, we are leveling the playing field and encouraging innovation and technology across the sector.
- We set the gold standard for cleaner technologies here in the U.S.

- If we don't develop the next generation of clean coal technologies here in the U.S., no one else will.
- It's important to remember that our technologies are exported to developing countries and others. The Obama Administration basically froze all future clean coal technologies to the detriment of millions in China and India.
- We want to export our cleaner energy and technology so we can improve lives while driving down emissions and air pollution worldwide.
- This is the path to true international environmental progress.
- And this is precisely what President Trump and his Administration are focused on.

In order to do this, we must provide the regulatory certainty needed for investments and development to move forward.

- As you know, we issued a rule to delay the compliance dates for the 2015 Steam Electric ELG rule until 2020.
- Meanwhile, we are conducting a rulemaking to revise the 2015 rule for two waste streams.
- Last month, we initiated the Interagency Review of our proposal with OMB.
- We are working to align the release of the proposed ELG rule and the forthcoming CCR rule as much as possible.

Speaking of CCR, over the next year, we intend to issue three regulatory packages to resolve remaining issues and develop a federal CCR permit program.

- We signed the first package this past July to address beneficial use issues remanded to the Agency by the DC Circuit Court.

- The second package will address the remaining litigation issues and the issues remanded to the Agency in March 2019.
- The third package will contain the proposed regulations for a federal CCR permit program.
- By completing this framework, our state partners will have a stable set of regulations.
- This will enable them to more easily develop permit programs and submit them to the EPA for approval.
- We encourage states to follow the lead of Oklahoma and Georgia and begin to assume oversight within their borders.
- Our team is available to address any questions or uncertainties about the CCR program.

We are working hard to provide greater regulatory certainty across a host of Clean Water Act issues.

- Earlier this month, we officially repealed the previous administration's **2015 Waters of the U.S. Rule**.
- Our Step 1 final rule repeals the 2015 Rule and recodifies the longstanding and familiar regulatory text that existed previously.
- It also sets the stage for “Step 2” – our proposed revised definition of “waters of the United States.”
- Together, our proposed definition and existing state programs would provide a strong network of coverage for the nation’s water resources.
- This is what Congress intended when it enacted the Clean Water Act.
- Our revised and more precise definition will mean that hardworking Americans will spend less time and money determining whether they need a federal permit and more time growing their business, creating jobs, and improving their local communities.
- We intend to finalize it this winter.

This would be an appropriate time to mention our recent groundwater guidance.

- Conflicting federal court decisions and a prior lack of clear Agency guidance have created uncertainty regarding NPDES permits and whether they are required for releases to groundwater.
- In February of last year, EPA requested public comment on whether the Agency should revise or clarify its position on the issue.
- At the same time, we undertook a comprehensive review of prior Agency statements and the text, structure, and legislative history of the Clean Water Act.
- Based on this analysis and consideration of public input, we concluded that Congress excluded releases of pollutants to groundwater from the Act's permitting requirements.
- And we believe this is the case regardless of whether there is a hydrological connection between the groundwater and a Water of the U.S.
- Our Interpretative Statement concludes that Congress left regulation of those releases to the states and EPA's other statutory authorities.
- I should note that because of court decisions in the Fourth and Ninth Circuits, our statement is not applicable in States within those Circuits.
- We expect the Supreme Court to provide clarity nationwide on this issue when it considers the *Maui* case this fall.

I also want to give a quick update on **Section 404 and 401**.

- Regarding **Section 404(g)**, we have initiated a rulemaking to modernize our existing assumption regulations.

- By empowering states and tribes to take on this permitting responsibility, we can achieve greater efficiencies in infrastructure and other permitting decisions while continuing to protect the environment.
- We expect to issue a proposed rule next year.
- We are also moving forward with common-sense reforms to **Section 404(c)**.
- Our goal is to provide greater clarity regarding when and how EPA may exercise its 404(c) authority.
- For decades, the Agency had followed a procedure that we believe was consistent with the Clean Water Act.
- That is, until the previous administration began preemptively and retroactively vetoing projects.
- We intend to propose a rule by the end of the year that seeks to solve these problems.
- Finally, in August, we issued a proposal to ensure that states comply with the plain language and intent of **Section 401**.
- This section gives states a say in federally-approved projects that would impact navigable waters within their borders.
- Many states implement Section 401 consistent with the law.
- However, others have not.
- In certain cases, states have used Section 401 to kill or delay energy infrastructure projects, sometimes longer than a decade.
- The Clean Water Act was not designed to allow states to drag out decisions for years or to use 401 authority to veto projects of national significance.
- Our proposal would ensure that states adhere to the statutory intent of the law.

We are also taking steps to improve coordination between EPA and other federal agencies, particularly with respect to NEPA.

- Under the law, we are required to provide comments on draft Environmental Impact Statements within a 45-day timeframe.
- I'm proud to report that for Fiscal Year 2018 we met the deadline **99 percent** on time.
- We are working toward 100 percent for Fiscal Year 2019.
- And last year, we began updating the memo which guides our NEPA responsibilities – a memo which hasn't been updated since 1984.

We've made huge strides across the Agency with respect to permitting.

- Prior to this administration, we didn't know how long our permitting process took from start to finish.
- You can't improve a process if you don't measure it.
- So we instituted Lean Management to systematically track and measure our permit obligations.
- And because we are now tracking the process, we are able to fix problems on a monthly basis, rather than annually.
- We're already seeing dramatic improvements.
- Between June 2018 and May 2019, we reduced the backlog of permit applications older than six months by **51 percent overall**.
- Our ultimate goal is to make all permit decisions, up or down, in six months.
- I am not suggesting that we approve all permits within a set amount of time. I am suggesting that we make a decision, yes or no, within a set amount of time.
- This is the type of certainty that drives innovation forward.
- And innovation is key to both environmental protection and economic growth.

- From 1970 to 2018, the United States reduced the six criteria air pollutants 74 percent, while the economy grew over 275 percent.
- This is a remarkable accomplishment – one that we owe largely to new technologies developed by companies and workers represented here today.
- Thank you for your time, thank you for your attention, and I would be glad to take your questions in the time remaining.

Message

From: ross.davidp@epa.gov [ross.davidp@epa.gov]
Sent: 9/26/2019 5:45:38 PM
To: Bodine, Susan [bodine.susan@epa.gov]
CC: Dennis, Allison [Dennis.Allison@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]; Hull, George [Hull.George@epa.gov]; Egan, Patrick [egan.patrick@epa.gov]
Subject: Re: Urgent: LAW360 q re: CA announcement

Hi all - I'm starting to track some of the press stuff. I've been on calls all day on other matters.

I don't think we need to send the 2017 letter, because the next question will be that's only one letter, do you have others? It will be a never ending Q&A do loop. The higher level answer is we conduct state program oversight all the time in our regions. That is a normal and indeed mandatory part of our job once we delegate a program.

Regarding the second question - a fundamental basis of our storm water management program is to ensure that trash and other contaminants from city streets don't get into the storm water management system.

Sent from my iPad

On Sep 26, 2019, at 1:39 PM, Bodine, Susan <bodine.susan@epa.gov> wrote:

R9

Lee and Dave have a copy

Subject is 1979 exemption from bacteria wqs for the Oceanside treatment plant the state gave SF

Sent from my iPhone

On Sep 26, 2019, at 10:21 AM, Dennis, Allison <Dennis.Allison@epa.gov> wrote:

Great responses for both questions. Regarding the 2017 letter it would be helpful to know who it came from (OECA or OW or R9?)

From: Bodine, Susan <bodine.susan@epa.gov>
Sent: Thursday, September 26, 2019 12:50 PM
To: Dennis, Allison <Dennis.Allison@epa.gov>
Cc: Ross, David P <ross.davidp@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>; Hull, George <Hull.George@epa.gov>; Egan, Patrick <egan.patrick@epa.gov>
Subject: Re: Urgent: LAW360 q re: CA announcement

Q) EPA conducts oversight over state programs routinely. Do you want to send the 2017 letter on the CA variance for SF as an example?

Q2: Dischargers are supposed to monitor for compliance with water quality standards including bacteria standards.

Sent from my iPad

On Sep 26, 2019, at 9:26 AM, Dennis, Allison <Dennis.Allison@epa.gov> wrote:

Another one.

Law360 (deadline asap) two questions:

- 1) I was on the call with Susan Bodine this morning, and I'd like to request information about how many of these types of letters have been sent from the EPA (either HQ or regional offices) to states about similar issues. The Washington Post reported one issued by the Obama administration to Wisconsin, but are there others?
- 2) And one follow up question, the letter makes reference to EPA's "concern" about the amount of human feces that ends up in the Los Angeles and San Francisco sewer systems. How does the EPA know exactly how much human feces is ending up in "nearby water" and whether that amount poses a health risk?

From: jc.rodriguez@law360.com <jc.rodriguez@law360.com>

Sent: Thursday, September 26, 2019 11:47 AM

To: Press <Press@epa.gov>; Block, Molly <block.molly@epa.gov>

Subject: Re: EPA warning letters

And one follow up question, the letter makes reference to EPA's "concern" about the amount of human feces that ends up in the Los Angeles and San Francisco sewer systems. How does the EPA know exactly how much human feces is ending up in "nearby water" and whether that amount poses a health risk?

On Thu, Sep 26, 2019 at 11:06 AM Juan Carlos Rodriguez <jc.rodriguez@law360.com> wrote:

Hi,

I was on the call with Susan Bodine this morning, and I'd like to request information about how many of these types of letters have been sent from the EPA (either HQ or regional offices) to states about similar issues. The Washington Post reported one issued by the Obama administration to Wisconsin, but are there others?

Thank you.

--

Juan Carlos Rodriguez
Senior Environment Reporter



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On the Record Press Briefing at the White House Tuesday, October 15, 2019 11:00AM ET White House Briefing Room

OVERVIEW:

- You will hold a press briefing in the White House briefing room to highlight the Lead and Copper Rule.
- You will open with brief remarks, less than 10 minutes, then take q/a from the White House Press Corps.
- The White House press team will prep you with a q/a session before the briefing.

DISCUSSION POINTS

- As part of Children's Health Month, the U.S. Environmental Protection Agency (EPA) is announcing a proposed rule that significantly improves the actions that water systems have to take to reduce lead in the nation's drinking water.
- This action represents the first major overhaul of the Lead and Copper Rule since 1991 and marks a critical step in advancing the Trump Administration's Federal Action Plan to Reduce Childhood Lead Exposures.
- Although we have made tremendous progress in removing lead from our nation's drinking water, some children and communities are still being exposed to lead.
- EPA is delivering on President Trump's commitment to ensure all Americans have access to safe and clean water by proposing a new Lead and Copper Rule that requires action sooner, increases transparency, and safeguards our children and most at-risk communities.
- In conjunction with releasing the proposed rule, EPA and the Department of Housing and Urban Development have launched a new website that summarizes available federal programs that help finance or fund lead service line replacement. The new resource also includes case studies demonstrating how cities and states have successfully leveraged federal resources to support lead service lines (LSLs) replacement projects.
- The agency's proposal takes a proactive and holistic approach to improving the current rule—from testing to treatment to telling the public about the levels and risks of lead in drinking water.
- The proposal focuses on six key areas. Under the proposal, a community water system would be required to take new actions, including, but not limited to:
 - **1) identifying the most impacted areas** by requiring water systems to complete and maintain a publicly-available inventory of the LSLs at homes and requiring water systems to "find-and-fix" sources of lead when a sample in the home exceeds 15 parts per billion (ppb).
 - **2) strengthening drinking water treatment** by requiring corrosion control treatment based on tap sampling results and establishing a new trigger level of 10 ppb. Water systems will also be required to "find-and-fix" sources of lead by adjusting treatment or water chemistry when a sample in the home exceeds 15 ppb.
 - **3) replacing lead service lines** by requiring water systems to replace the water system-owned portion of an LSL when a customer chooses to replace their portion of the line. Additionally, depending on their level above the trigger level, systems would be required take LSL replacement actions, as described below.

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- **4) increasing drinking water sampling reliability** by requiring water systems to follow new, improved sampling procedures and rethink sampling sites to better target higher lead levels.
- **5) improving risk communication** to customers by requiring water systems to notify customers within 24 hours if a sample collected in their home is above 15 ppb. Water systems will also be required to conduct regular outreach to the homeowners with LSLs.
- **6) better protecting children in schools and child care facilities** by requiring water systems to take drinking water samples from the schools and child care facilities served by the system.

WHAT TO WATCH OUT FOR

- The White House press corps will ask some questions on Lead and Copper, but will more than likely ask a number of questions off topic, but EPA related.
- We have provided a list of possible questions and the answers. Many we believe will start to touch on climate change as a whole, the letters to California, and deregulation.

ATTACHMENTS:

- Hot Topics talking points
- WH Briefing Q/A
- White House Documents

PARTICIPANTS:

EPA

Administrator Wheeler

Corry Schiermeyer, Associate Administrator, OPA, EPA

Non-EPA

White House Press Corps

Staff Responsible for Briefing Memo:

Corry Schiermeyer, Associate Administrator, OPA, EPA, 202-564-6782

Office of the Press Secretary
The White House

FOR IMMEDIATE RELEASE
October 8, 2019

Statement from the Press Secretary

The President has done nothing wrong, and the Democrats know it. For purely political reasons, the Democrats have decided their desire to overturn the outcome of the 2016 election allows them to conduct a so-called impeachment inquiry that ignores the fundamental rights guaranteed to every American. These partisan proceedings are an affront to the Constitution—as they are being held behind closed doors and deny the President the right to call witnesses, to cross-examine witnesses, to have access to evidence, and many other basic rights.

Today, on behalf of President Donald J. Trump, Pat Cipollone, Counsel to the President, sent a [HYPERLINK "[\t \"_blank\" \] to Speaker Pelosi and Chairmen Engel, Schiff, and Cummings. The letter demonstrates that the Democrats' inquiry lacks any legitimate constitutional foundation, any pretense of fairness, and even the most elementary due process protections. Democrats are pursuing purely partisan goals, including influencing the upcoming 2020 election. In the process, they are violating civil liberties and the separation of powers, threatening Executive Branch officials with punishment simply for exercising their constitutional rights and prerogatives. All of this violates the Constitution, the rule of law, and every past precedent. For these reasons, the Executive Branch cannot be expected to, and will not participate in, this exercise of partisan political theater.](https://whitehouse.us19.list-manage.com/track/click?u=c97630621baff8c44fe607661&id=be32086104&e=c08429553e)

President Trump and his entire Administration will, however, keep fighting for the American people, growing the economy, building prosperity, and protecting America's interests at home and abroad.

###

MUST-READ EXCERPTS | White House Letter to House Democrats Regarding Their Unconstitutional Inquiry

REJECTING HOUSE DEMOCRATS' UNCONSTITUTIONAL INQUIRY

- “Your unprecedented actions have left the President with no choice. In order to fulfill his duties to the American people, the Constitution, the Executive Branch, and all future occupants of the Office of the Presidency, President Trump and his Administration cannot participate in your partisan and unconstitutional inquiry under these circumstances.”
- “Given that your inquiry lacks any legitimate constitutional foundation, any pretense of fairness, or even the most elementary due process protections, the Executive Branch cannot be expected to participate in it.”
- “Consistent with the duties of the President of the United States, and in particular his obligation to preserve the rights of future occupants of his office, President Trump cannot permit his Administration to participate in this partisan inquiry under these circumstances.”
- “If the Committees wish to return to the regular order of oversight requests, we stand ready to engage in that process as we have in the past, in a manner consistent with well-established bipartisan constitutional protections and a respect for the separation of powers enshrined in our Constitution.”
- “We hope that, in light of the many deficiencies we have identified in your proceedings, you will abandon the current invalid efforts to pursue an impeachment inquiry and join the President in focusing on the many important goals that matter to the American people.”

THEIR ATTEMPT TO OVERTURN THE DEMOCRATIC PROCESS

- “President Trump and his Administration reject your baseless, unconstitutional efforts to overturn the democratic process.”
- “Put simply, you seek to overturn the results of the 2016 election and deprive the American people of the President they have freely chosen.”
- “As one member of Congress explained, he is ‘concerned that if we don’t impeach the President, he will get reelected.’”
- “The effort to impeach President Trump...is a naked political strategy that began the day he was inaugurated, and perhaps even before.
- “In fact, your transparent rush to judgment, lack of democratically accountable authorization, and violation of basic rights in the current proceedings make clear the illegitimate, partisan purpose of this purported ‘impeachment inquiry.’”
- “Precisely because it nullifies the outcome of the democratic process, impeachment of the President is fraught with the risk of deepening divisions in the country and creating long-lasting rifts in the body politic.”

UNPRECEDENTED, CONSTITUTIONALLY INVALID, IN VIOLATION OF DUE PROCESS

- “In the history of our Nation, the House of Representatives has never attempted to launch an impeachment inquiry against the President without a majority of the House taking

political accountability for that decision by voting to authorize such a dramatic constitutional step.”

- “To comply with the Constitution’s demands, appropriate procedures would include – at a minimum – the right to see all evidence, to present evidence, to call witnesses, to have counsel present at all hearings, to cross-examine all witnesses, to make objections relating to the examination of witnesses or the admissibility of testimony and evidence, and to respond to evidence and testimony.”
- “[T]he Committees must provide for the disclosure of all evidence favorable to the President and all evidence bearing on the credibility of witnesses called to testify in the inquiry.”
- “In addition, the House has not provided the Committees’ Ranking Members with the authority to issue subpoenas.”

HOUSE DEMOCRATS’ OUTRAGEOUS ACTIONS

- “Perhaps the best evidence that there was no wrongdoing on the call is the fact that, after the actual record of the call was released, Chairman Schiff chose to concoct a false version of the call and to read his made-up transcript to the American people at a public hearing.”
- “The real problem, as we are now learning, is that Chairman Schiff’s office, and perhaps others – despite initial denials – were involved in advising the whistleblower before the complaint was filed.”
- “Anyone who was involved in the preparation or submission of the whistleblower’s complaint cannot possibly act as a fair and impartial judge in the same matter – particularly after misleading the American people about his involvement.”

HOUSE DEMOCRATS’ THREATS AND INTIMIDATION

- “Threats by the Committees against Executive Branch witnesses who assert common and longstanding rights destroy the integrity of the process and brazenly violate fundamental due process.”
- “In letters to State Department employees, the Committees have ominously threatened – without any legal basis and before the Committees even issued a subpoena – that ‘[a]ny failure to appear’ in response to a mere letter request for a deposition ‘shall constitute evidence of obstruction.’”
- “[T]he Committees have broadly threatened that if State Department officials attempt to insist upon the right for the Department to have an agency lawyer present at depositions to protect legitimate Executive Branch confidentiality interests – or apparently if they make any effort to protect those confidentiality interests at all – these officials will have their salaries withheld.”
- “The Committees’ assertions on these points amount to nothing more than strong-arm tactics designed to rush proceedings without any regard for due process and the rights of individuals and of the Executive Branch. Threats aimed at intimidating individuals who assert these basic rights are attacks on civil liberties that should profoundly concern all Americans.”

###

Message

From: schiermeyer.corry@epa.gov [schiermeyer.corry@epa.gov]
Sent: 9/25/2019 3:38:55 PM
To: Schiermeyer, Corry [schiermeyer.corry@epa.gov]
Subject: Re: Water

Date is up in the air now...today or tomorrow. Ryan needs to make a decision on what time to transmit. I suggested 5:30am tomorrow.

I need it today...I can share the PDF unsigned version on an embargo, but will need final signed before 5pm.

Ask Ryan about autopen

Sorry...OPA has media lead..not letter lead, but having this final impacts what we have planned!

Thank you!

Sent from my iPhone

> On Sep 25, 2019, at 11:32 AM, White, Elizabeth <white.elizabeth@epa.gov> wrote:

>

> What time do you need this by? It's going to take some time to edit this again. Does it need to be autopenned or is the Administrator signing it? Date today?

>

> Beth White

> Director, Office of the Executive Secretariat

> U.S. Environmental Protection Agency

> (202) 564-1781 direct

> Ex. 6 Personal Privacy (PP) cell

>

> -----Original Message-----

> From: Schiermeyer, Corry <schiermeyer.corry@epa.gov>

> Sent: Wednesday, September 25, 2019 11:15 AM

> To: White, Elizabeth <white.elizabeth@epa.gov>; Mejias, Melissa <mejias.melissa@epa.gov>; Block, Molly <block.molly@epa.gov>; Beach, Christopher <beach.christopher@epa.gov>

> Cc: McFaul, Jessica <mcfaul.jessica@epa.gov>

> Subject: RE: Water

>

> Yes...it has changed since Monday...

>

> -----Original Message-----

> From: White, Elizabeth <white.elizabeth@epa.gov>

> Sent: Wednesday, September 25, 2019 11:13 AM

> To: Schiermeyer, Corry <schiermeyer.corry@epa.gov>; Mejias, Melissa <mejias.melissa@epa.gov>; Block, Molly <block.molly@epa.gov>; Beach, Christopher <beach.christopher@epa.gov>

> Cc: McFaul, Jessica <mcfaul.jessica@epa.gov>

> Subject: RE: Water

>

> We did this letter Monday. Please see attached. Ryan has the original. Has this letter changed since Monday?

>

> Beth White

> Director, Office of the Executive Secretariat U.S. Environmental Protection Agency

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> From: Schiermeyer, Corry <schiermeyer.corry@epa.gov>

> Sent: Wednesday, September 25, 2019 11:11 AM

> To: White, Elizabeth <white.elizabeth@epa.gov>; Mejias, Melissa <mejias.melissa@epa.gov>; Block, Molly <block.molly@epa.gov>; Beach, Christopher <beach.christopher@epa.gov>

> Cc: McFaul, Jessica <mcfaul.jessica@epa.gov>

> Subject: RE: Water

>

> This is a different letter. This letter is to the Governor about water. The letter we released yesterday/Monday was to CARB and on air issues.

>

> This letter should be dated for September 26 as we will be transmitting early, early tomorrow morning.

>

> Thank you!

>
> -----Original Message-----
> From: White, Elizabeth <white.elizabeth@epa.gov>
> Sent: Wednesday, September 25, 2019 11:09 AM
> To: Mejias, Melissa <mejias.melissa@epa.gov>; Schiermeyer, Corry <schiermeyer.corry@epa.gov>; Block, Molly <block.molly@epa.gov>; Beach, Christopher <beach.christopher@epa.gov>
> Cc: McFaul, Jessica <mcfaul.jessica@epa.gov>
> Subject: RE: Water
>
> So is this the same letter we did the other day? I take it this letter changed since Monday? And this is the one that is going to the Governor?
>
> Beth White
> Director, Office of the Executive Secretariat U.S. Environmental Protection Agency
> (202) 564-1781 direct
> Ex. 6 Personal Privacy (PP) cell
>
> -----Original Message-----
> From: Mejias, Melissa <mejias.melissa@epa.gov>
> Sent: Wednesday, September 25, 2019 10:53 AM
> To: Schiermeyer, Corry <schiermeyer.corry@epa.gov>; Block, Molly <block.molly@epa.gov>; Beach, Christopher <beach.christopher@epa.gov>
> Cc: McFaul, Jessica <mcfaul.jessica@epa.gov>; White, Elizabeth <white.elizabeth@epa.gov>
> Subject: RE: Water
>
> Of course, please find the letter attached. The date needs to be amended.
>
> -----Original Message-----
> From: Schiermeyer, Corry <schiermeyer.corry@epa.gov>
> Sent: Wednesday, September 25, 2019 10:49 AM
> To: Block, Molly <block.molly@epa.gov>; Beach, Christopher <beach.christopher@epa.gov>; Mejias, Melissa <mejias.melissa@epa.gov>
> Cc: McFaul, Jessica <mcfaul.jessica@epa.gov>; White, Elizabeth <white.elizabeth@epa.gov>
> Subject: RE: Water
>
> Mel...could you send us all what you sent Beth?
>
> -----Original Message-----
> From: Block, Molly <block.molly@epa.gov>
> Sent: Wednesday, September 25, 2019 10:48 AM
> To: Beach, Christopher <beach.christopher@epa.gov>; Schiermeyer, Corry <schiermeyer.corry@epa.gov>
> Cc: McFaul, Jessica <mcfaul.jessica@epa.gov>
> Subject: RE: Water
>
> Can you forward my way so I can get cracking on a script for susan?
>
> -----Original Message-----
> From: Beach, Christopher
> Sent: Wednesday, September 25, 2019 10:06 AM
> To: Schiermeyer, Corry <schiermeyer.corry@epa.gov>
> Cc: McFaul, Jessica <mcfaul.jessica@epa.gov>; Block, Molly <block.molly@epa.gov>
> Subject: Re: Water
>
> I sent it home with AW last night. Trying to figure out if he looked at it yet.
>
> Sent from my iPhone
>
>> On Sep 25, 2019, at 8:59 AM, Schiermeyer, Corry <schiermeyer.corry@epa.gov> wrote:
>>
>> Do we have an updated water release with quote?
>>
>> Molly needs it. I will get her the final letter.
>>
>> Sent from my iPhone
>>
>>> On Sep 24, 2019, at 10:29 AM, McFaul, Jessica <mcfaul.jessica@epa.gov> wrote:
>>>
>>> This is the most recent version of the release that I edited and sent
>>> back to Doug, based on AAW's comments below. Doug could say whether
>>> AAW has seen this version. Jess
>>>
>>> -----Original Message-----
>>> From: McFaul, Jessica
>>> Sent: Monday, September 23, 2019 1:31 PM
>>> To: Benevento, Douglas <benevento.douglas@epa.gov>
>>> Cc: Schiermeyer, Corry <schiermeyer.corry@epa.gov>
>>> Subject: RE: Water
>>>

>>> Edits incorporated (plus one more from me for consideration). Looping
>>> Corry for her awareness. Jess
>>>
>>> -----Original Message-----
>>> From: Benevento, Douglas <benevento.douglas@epa.gov>
>>> Sent: Monday, September 23, 2019 12:10 PM
>>> To: McFaul, Jessica <mcfaul.jessica@epa.gov>
>>> Subject: FW: Water
>>>
>>>
>>> -----Original Message-----
>>> From: adm15.arwheeler.email <adm15.arwheeler.email@epa.gov>
>>> Sent: Monday, September 23, 2019 11:36 AM
>>> To: Benevento, Douglas <benevento.douglas@epa.gov>; Jackson, Ryan
>>> <jackson.ryan@epa.gov>
>>> Subject: Water
>>>
>>> On press release, my quote after obligation add a parenthetical
>>> (receiving its delegated authority in 19XX)
>>>
>>> Last sentence of quite has a typo, rewrite it to say
>>>
>>> "If California does not step up to its delegated responsibilities then EPA will be forced to take
actions."
>>>
>>> Sent from my iPhone
>>> <09-23-2019 - DRAFT RELEASE - Water letter to CA AAW EDITS.docx>

Message

From: White, Elizabeth [white.elizabeth@epa.gov]
Sent: 9/25/2019 3:13:20 PM
To: Schiermeyer, Corry [schiermeyer.corry@epa.gov]; Mejias, Melissa [mejias.melissa@epa.gov]; Block, Molly [block.molly@epa.gov]; Beach, Christopher [beach.christopher@epa.gov]
CC: McFaul, Jessica [mcfaul.jessica@epa.gov]
Subject: RE: Water
Attachments: Newsom letter.pdf

We did this letter Monday. Please see attached. Ryan has the original. Has this letter changed since Monday?

Beth White
Director, Office of the Executive Secretariat
U.S. Environmental Protection Agency
(202) 564-1781 direct
Ex. 6 Personal Privacy (PP) cell

-----Original Message-----

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Sent: Wednesday, September 25, 2019 11:11 AM
To: White, Elizabeth <white.elizabeth@epa.gov>; Mejias, Melissa <mejias.melissa@epa.gov>; Block, Molly <block.molly@epa.gov>; Beach, Christopher <beach.christopher@epa.gov>
Cc: McFaul, Jessica <mcfaul.jessica@epa.gov>
Subject: RE: Water

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Director, Office of the Executive Secretariat U.S. Environmental Protection Agency
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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

JUL 18 2011

REPLY TO THE ATTENTION OF:

Cathy Stepp, Secretary
Wisconsin Department of Natural Resources
Post Office Box 7921
Madison, Wisconsin 53707-7921

Dear Ms. Stepp:

I am writing with regard to the legal authority under which Wisconsin administers its National Pollutant Discharge Elimination System (NPDES) approved program. The U.S. Environmental Protection Agency has completed a review to determine if the State has the minimum legal authority needed to properly administer the program. In general, the provisions in 40 C.F.R. §§ 123.25, 123.27, and 123.30 formed the basis for the review. EPA promulgated these provisions under section 304(i) of the Clean Water Act, 33 U.S.C. § 1314(i). We conducted the review as part of EPA's Permitting for Environmental Results (PER) initiative, a national partnership with states to strengthen the NPDES program. Under PER, EPA reviews the integrity of state NPDES programs and works together with states to make improvements as needed.

EPA approved Wisconsin's NPDES base program in 1974. EPA subsequently approved the State to regulate discharges from federal facilities, administer the pretreatment program, issue general permits, and implement the biosolids program.

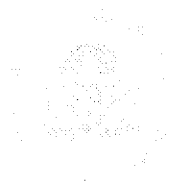
During the review of Wisconsin's legal authorities, EPA coordinated closely with your staff to understand the State's authority and identify and resolve questions. We thank you and your staff for the time and effort spent during this lengthy process, which included six meetings or calls with the State beginning September 2009.

The enclosure to this letter identifies concerns with or questions about the State's authority. Omissions or deviations from federal requirements are specifically identified. As noted in the enclosure, certain of the concerns remain the subject of prior disapprovals by EPA under 40 C.F.R. § 123.62. These require immediate corrective action by the State.

Recently, the Wisconsin Supreme Court issued an opinion in *Andersen v. Department of Natural Resources*, 332 Wis. 2d 41, 796 N.W. 2d 1 (2011), which, among other things, stated:

When the EPA approved the WPDES permit program, the EPA deemed Wisconsin's statutory and regulatory authority adequate to issue permits that comply with the requirements of the Clean Water Act and of 40 C.F.R. pt. 123. See 33 U.S.C. § 1342(b)(1)(A), (2)(A); § 1342(c)(1); 40 C.F.R. § 123.61(b). 40 C.F.R.

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CAMPBELL PROMOTIONAL
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2000
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§ 123.25 sets forth the permitting requirements that a proposed permit program must meet. Significantly, both 40 C.F.R. §§ 122.44 and 122.45 are included among those permitting requirements. See 40 C.F.R. § 123.25(a)(15), (16). Thus, when the EPA approved the WPDES permit program, the EPA necessarily determined that the program complies with 40 C.F.R. §§ 122.44 and 122.45. Similarly, any substantial revisions to the WPDES permit program have been, and will continue to be, subject to the EPA's approval. See 40 C.F.R. § 123.62(a).

Id. at 72-3, 796 N.W. 2d at 17. Our comments in the enclosure indicate numerous apparent omissions and deviations between Wisconsin's current statute and regulations and federal requirements. In light of the *Andersen* case, we are requesting that the omissions and deviations in State authority be corrected quickly. Further, we emphasize that EPA has not approved those elements of the State's program that are less stringent or comprehensive than federally required.

Please provide a written response to this letter. With the reply, please provide a detailed statement from the Wisconsin Attorney General, with specific citations, demonstrating that the State has adequate authority on the topics identified in the enclosure. If the State lacks explicit authority, please provide the State's plan, including a schedule with milestones, for establishing the required authority. Please ensure that required administrative rules will be promulgated not later than one year after the reply letter, and that required statutory provisions are promulgated within no more than two years. Please provide the reply letter and any Attorney General's statement by October 15, 2011.

Again, thank you for cooperating with EPA to review Wisconsin's NPDES authority. Please contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'S. Hedman', with a long horizontal flourish extending to the right.

Susan Hedman
Regional Administrator

Enclosure

Enclosure¹

1. The federal rule at 40 C.F.R. § 122.41(m) pertains to intentional diversions around a portion of a treatment facility. Wisconsin amended its analog in January 2011. The analog now appears at Wis. Admin. Code NR §§ 205.07(1)(v) and (2)(d). The Wisconsin rule appears inconsistent with the federal rule for the following reasons. First, the state regulation includes overflows from collection systems. The federal provision at 40 C.F.R. § 122.41(m)(1) limits bypass to mean the intentional diversion around any *portion of a treatment facility* (emphasis added). Second, the Wisconsin rule allows the State to authorize scheduled bypasses whereas the federal rule provides that a permittee may allow a bypass only if it is for essential maintenance and the bypass does not cause effluent limits to be exceeded. Third, the federal regulation provides that the Director may approve an anticipated bypass if the Director determines that the conditions in 40 C.F.R. §§ 122.41(m)(4)(A) - (C) are met. The state regulation does not appear to include these as necessary conditions for authorizing scheduled bypasses. Fourth, some of the reporting requirements under the state regulation appear less rigorous than those in 40 C.F.R. § 122.41(m). The federal regulation requires oral reporting of bypass within 24 hours; the state regulation allows for fax or e-mail reporting. The federal regulation requires written reporting within 5 days of the time the permittee becomes aware of the bypass; the state regulation requires reporting within 5 days of the *cessation* of the bypass. The federal regulation requires reporting of the date and time of bypass; the state regulation requires only that the date be reported. Wisconsin must modify the State rule to be consistent with federal requirements, or document the specific basis of the State's authority to implement the provisions above consistent with federal program requirements and in a manner that addresses the concerns raised above.

2. The federal rule at 40 C.F.R. § 122.45 addresses a variety of topics, such as the duration over which effluent limitations are to be expressed, pollutants in intake water, internal waste streams, and mass limitations. EPA did not find Wisconsin statutory or code provisions that implement 40 C.F.R. § 122.45. The State needs to promulgate rules to include a provision equivalent to 40 C.F.R. § 122.45, or document the specific basis on which the State has the necessary authority to implement the federal regulatory provision as described.

3. The federal rule at 40 C.F.R. §§124.5 (a), (c) and (d) provides a process for the modification, revocation and reissuance, or termination of permits. § 124.5(a) allows "interested persons" to request these actions in writing; § 124.5(c) provides a process for issuance of a modified permit; and § 124.5(d) provides a process for permit termination. Wisconsin's provisions at Wis. Stat. §§ 283.53(2) and 283.63, and in Wis. Admin. Code NR § 203, do not allow an "interested person" to request modification, revocation and reissuance, or termination of permits, and therefore the State's rules appear to functionally restrict the class of individuals that may seek review of a permit. Additionally, Wisconsin's regulations do not appear to provide a mechanism for the termination of a permit (further discussed below). The State must modify its statute

¹ EPA's legal authority review considered Wisconsin's governing statute and rules generally as they existed in 2005. Subsequent changes to Wisconsin's NPDES legal authorities need to be submitted to EPA for possible program revision and approval under 40 C.F.R. § 123.62. Changes that have not been submitted to and approved by EPA are not part of the state's federally approved NPDES program and cannot supersede or revise the previously approved provisions without specific EPA approval.

and/or rule to include a provision equivalent to 40 C.F.R. § 124.5, or document the specific basis on which the State has the necessary authority to implement the regulatory provision as described.

4. 40 C.F.R. part 125, Subpart I, includes requirements for cooling water intake structures at new facilities, under § 316(b) of the Clean Water Act (CWA), 33 U.S.C. § 1326(b). While Wis. Stat. § 283.31 provides authority for Wisconsin to require that the location, design, construction and capacity of water intake structures reflect the best technology available for minimizing adverse environmental impacts, EPA did not find code provisions prescribing the manner in which Wisconsin will carry out its statutory authority relative to new facilities. The State must modify its rules to include a provision equivalent to 40 C.F.R. part 125, Subpart I, and the related provisions of the CWA, or document the specific basis on which the State has the necessary authority to implement the regulatory provision as described.

5. The federal rule at 40 C.F.R. § 123.30 provides that all states shall provide an opportunity for judicial review in state court of the final approval or denial of permits, without limitations based on financial interest or proximate property ownership. Wisconsin's requirement at Wis. Stat. § 227.52 that an administrative decision "adversely affect the substantial interests of any person," does not define "adversely affect" and "substantial interests." It appears that § 227.52 restricts the class of persons entitled to seek judicial review as set out in 40 C.F.R. § 123.30 and CWA § 509, 33 U.S.C. § 1369. The State must document how its provisions for judicial review provide as expansive an opportunity for judicial review as do the federal requirements, or modify its statute and/or promulgate a rule to be consistent with federal requirements.

6. Wisconsin law at Wis. Stat. § 283.17(2) provides a 10-year period of protection from the requirement to meet more stringent effluent limitations when modifications have been made to a facility to meet thermal effluent limits established on the basis of water quality standards or Wis. Stat. § 283.17(1). This provision is similar to CWA § 316(c), 33 U.S.C. § 1326(c). However, the Wisconsin provision appears broader in scope than the federal equivalent in that it includes in this exemption facilities with alternate thermal limitations (established under Wis. Stat. § 283.17(1)), not just facilities with water quality-based effluent limitations (WQBELs).

The basis for a period of protection in the Clean Water Act is a modification to a facility to meet thermal limitations. A facility to which an alternative thermal limit has been granted generally is not similarly situated to a facility which has made modifications to meet thermal effluent limits established on the basis of water quality standards. Alternative thermal limitations are premised on a demonstration that the current discharge is protective of the balanced and indigenous population (BIP) of shellfish, fish, and wildlife. See CWA § 316(a), 33 U.S.C. § 1326(a), and 40 C.F.R. part 125, Subpart H. Pursuant to this statutory provision, alternate thermal limitations require ongoing assessment, including data collection, to be able to demonstrate that a BIP is being protected. If studies indicate that a BIP is not being protected, then modifications to the facility may be required to meet protective limitations. Thus, the period of protection in CWA § 316(c) is not applicable to facilities with alternative thermal limitations. Under Wis. Stat. § 283.17(2), however, a facility with such alternative thermal limitations could claim an entitlement to a period of protection. The State must amend Wis. Stat. § 283.17(2) to eliminate

coverage of dischargers with alternate thermal limitations, or explain the basis on which the State will limit the period of protection consistent with the scope of the federal provision as described.

7. Wis. Stat § 283.19 requires the Wisconsin Department of Natural Resources (WDNR) to establish New Source Performance Standards (NSPS) by rule. EPA's review found that Wisconsin has not consistently updated Wis. Admin. Code NR §§ 221 through 299 to incorporate new or revised federal NSPS. Accordingly, please explain:

(a) Under what authority does Wisconsin incorporate federal NSPS into permits where Wisconsin omits a federal NSPS from Wis. Admin. Code NR §§ 221 through 299?

(b) Under what authority does Wisconsin incorporate the federal NSPS into permits where a NSPS in Wis. Admin. Code NR §§ 221 through 229 is less stringent than the federal NSPS?

Additionally, EPA reviewed Wis. Stat. § 283.31(3)(d) 2 and Wis. Admin. Code NR § 220.13. These provisions appear to authorize the establishment of effluent limitations based on federal effluent limitations guidelines (ELG) even when Wisconsin omits a federal ELG from Wis. Admin. Code NR §§ 221 to 299, or includes in those chapters an ELG that is less stringent than the federal counterpart.

(c) To the extent that Wisconsin cites to Wis. Stat. § 283.31(3)(d) 2 and Wis. Admin. Code NR § 220.13 in answering either question (7)(a) or 7(b) above, please explain how the provision operates for NSPS in light of the specificity provided in Wis. Admin. Code NR §§ 221 to 299. For issues 7 (a) – (c), if Wisconsin does not have authority to implement federal NSPS and ELG into permits, then the response to this letter must include the State's plan, with a schedule and milestones, for establishing the necessary authority.

8. The Wisconsin rule at Wis. Admin. Code NR §§ 106.145 pertains to the establishment of WQBELs for mercury discharges. By letter of February 17, 2009, EPA disapproved certain aspects of this rule. Wisconsin must amend the rule to cure the disapproval.

9. The Wisconsin rules at Wis. Admin. Code NR § 219 pertain to analytical methods.

(a) Wis. Admin. Code NR § 219 allows use of solid waste methods in the WPDES and Wisconsin pretreatment programs. EPA has not approved solid waste methods for use in the NPDES or federal pretreatment programs. Wisconsin must amend Wis. Admin. Code NR § 219 to exclude solid waste methods from use in the Wisconsin programs, except when such methods have been approved by EPA as alternative test procedures under 40 C.F.R. § 136.5.

(b) Wis. Admin. Code NR § 219 incorporates some of the methods that EPA has promulgated under 40 C.F.R. part 136. Does the chapter incorporate an EPA method only as of the date Wisconsin incorporated each such method into the chapter or are revisions to EPA methods prospectively incorporated?

(c) Has Wisconsin amended the chapter to include new EPA methods? Please see the attached list of changes to 40 C.F.R. part 136 since 2000.

The response to this letter needs to include the State's plan, with a schedule and milestone, for correcting Wis. Admin. Code NR § 219 to address the deficiency in number 9 (a) and any deficiency identified through the State's analysis of 9(b) and (c) above.

10. The federal rule at 40 C.F.R. § 132.6 identifies provisions of 40 C.F.R. part 132, Appendix F, which apply to the Great Lakes States, including Wisconsin. These specifically include: Procedure 3 (pertaining to total maximum daily loads (TMDL), wasteload allocations (WLA) in the absence of a TMDL, and preliminary WLAs for purposes of determining the need for WQBELs); Procedure 5, paragraphs D and E (pertaining to consideration of intake pollutants in determining “reasonable potential” and establishing WQBELs); and Procedure 6, paragraph D (pertaining to whole effluent toxicity). In 2000, EPA disapproved the corresponding Wisconsin rules and promulgated 40 C.F.R. § 132.6 for Wisconsin (see 65 *Federal Register* 66511 (November 6, 2000)). Wisconsin must amend the State rules as required to cure the disapproval.

11. The federal rule at 40 C.F.R. § 122.44(d) pertains to the establishment of effluent limitations based on water quality standards, including water quality criteria expressed in either a numeric or narrative fashion. Except for the general statement in Wis. Stat. § 283.31(5) (providing that the Department shall establish more stringent limitations if necessary to meet water quality standards), and the specific provisions in Wis. Admin. Code NR § 106 (pertaining to toxic and organoleptic substances) and Wis. Admin. Code NR § 217, Subchapter III (2010) (pertaining to phosphorus), EPA did not find equivalent State provisions that implement 40 C.F.R. § 122.44(d). The response to this letter must include the State’s plan, with a schedule and milestones, to establish rules (in addition to those in NR 106 and 217) that conform to 40 C.F.R. § 122.44(d).

12. Federal regulations prohibit permit issuance when permit conditions do not ensure compliance with the applicable water quality requirements of all affected states. 40 C.F.R. § 122.4(d). Wisconsin appears to lack an equivalent provision. We note that Wis. Stat. § 283.31(3) provides that a permit may issue only when discharges will meet all effluent limitations, standards of performance for new sources, effluent standards, and any more stringent limitations necessary to comply with any applicable federal law or regulation, but this provision is silent as to how the State prohibits discharges that would violate applicable water quality standards of affected states. Wisconsin must explain how it will address the deficiency noted in this comment, either through statutory amendment or corrective rulemaking, including a schedule and milestones for completion, or by citing existing, specific authority in a written explanation from the State’s Attorney General.

13. The federal rule at 40 C.F.R. § 122.44(k) identifies circumstances in which best management practices (BMP) must be included as conditions in permits. Except for the practices in Wis. Admin. Code NR §§ 216 and 243 pertaining to storm water and concentrated animal feeding operations, respectively, EPA did not find that Wisconsin has a statutory or rule provision requiring incorporation of BMPs into permits as provided in 40 CFR § 122.44(k). The response to this letter needs to include the State’s plan, with a schedule and milestones, for promulgating a rule equivalent to 40 C.F.R. § 122.44(k).

14. The federal rule at 40 C.F.R. § 122.44(l) generally provides that the interim effluent limitations, standards, and conditions in a reissued or renewed permit must be at least as stringent as the final limitations, standards, and conditions in the previous permit. EPA did not find an equivalent Wisconsin statutory or rule provision. The response to this letter needs to

include the State's plan, with a schedule and milestones, for promulgating a rule equivalent to 40 C.F.R. § 122.44(l).

15. The federal rule at 40 C.F.R. § 122.47 pertains to compliance schedules in permits. Except for problematic provisions noted elsewhere in this enclosure, EPA did not find an equivalent Wisconsin statutory or rule provision to implement this federal requirement. EPA reviewed Wis. Admin. Code NR § 106.117, but this rule is inconsistent with the federal requirement for several reasons, including that it: (a) only applies to WQBELs for toxic and organoleptic substances, (b) allows time to be added to a schedule so a permittee can perform work intended to justify a change in an effluent limitation, (c) does not include an "appropriateness" standard for the granting of a schedule, (d) does not require reports on progress toward meeting the final limitation, (e) does not mandate interim requirements, and (f) does not restrict schedules to statutory deadlines. In addition to establishing a compliance schedule rule with program-wide applicability, Wisconsin must amend Wis. Admin. Code NR § 106.117 to resolve the inconsistencies noted here. The response to this letter must include the State's plan for promulgating a rule equivalent to 40 C.F.R. § 122.47, and for correcting issues outlined in number 15 (a) – (f) above.

16. The federal rule at 40 C.F.R. Part 403 establishes requirements for pretreatment of nondomestic discharges to publicly-owned treatment works (POTWs). EPA revised this rule and related NPDES provisions at 40 C.F.R. §§ 122.21(j)(6)(ii), 122.44(j)(1), and 122.62(a)(7), in 2005. Some of the revisions make the federal program less stringent than it used to be. Wisconsin can choose to incorporate these revisions into its pretreatment program. However, some of the revisions make the federal program more stringent than the predecessor rule. EPA described the more stringent provisions at: http://www.epa.gov/npdes/pubs/pretreatment_streamlining_required_changes.pdf. Under 40 C.F.R. § 123.62, Wisconsin was required to adopt the more stringent provisions by November 2006, but the State has not done this. Wisconsin must adopt the more stringent provisions into its code. The response to this letter needs to include the State's plan, with a schedule and milestones, for promulgating a rule equivalent to 40 C.F.R. Part 403.

17. The Wisconsin rule at Wis. Admin. Code NR § 106.10 excludes noncontact cooling water from WQBELs, except to the extent that the limitations are for water treatment additives. Under the rule, water treatment additives do not include those compounds added at a rate and quantity necessary to provide a safe drinking water supply, or the addition of substances similar in type and amount to those typically added to a public drinking water supply. The relevant federal rule at 40 C.F.R. § 122.44(d)(1)(i) requires WQBELs for all pollutants that are or will be discharged at a level which will cause, have a reasonable potential to cause, or contribute to an excursion beyond applicable water quality criteria. Accordingly, Wisconsin must revise Wis. Admin. Code NR § 106.10 so it conforms to 40 C.F.R. § 122.44(d). To the extent that Wisconsin wants to consider intake pollutants when determining reasonable potential and setting WQBELs for discharges within the Great Lakes basin, the revised rules must conform to 40 C.F.R. part 132, Appendix F, Procedure 5, paragraphs D. and E. The response to this letter must include the State's plans, with a schedule and milestones, for revising Wis. Admin. Code NR § 106.10 so it conforms to 40 C.F.R. § 122.44(d).

18. The federal rule at 40 C.F.R. § 122.22 (d) requires that anyone signing a permit application or a report required under 40 C.F.R. § 122.22(a) or (b) certify that the information: is accurate and complete, was gathered by qualified persons, and was properly gathered and evaluated.²

Wisconsin's rule at Wis. Admin. Code NR § 205.07(1)(g), while including that signatories make a certification that the information they are submitting is "true, accurate, and complete," does not require inclusion of the information quality certification language set out in § 122.22 (d). The response to this letter must include the State's plans with a schedule for promulgating a rule equivalent to 40 C.F.R. § 122.22(d).

19. The federal rule at 40 C.F.R. § 122.24 pertains to concentrated aquatic animal production facilities. EPA did not find an equivalent Wisconsin statutory or code provision. The response to this letter must include the State's plan, with a schedule and milestones, for promulgating a rule equivalent to 40 C.F.R. § 122.24.

20. The federal rule at 40 C.F.R. § 122.50 provides for an adjustment to effluent limitations when part of a discharger's process wastewater is disposed into wells or POTWs or by land application. EPA did not find an equivalent Wisconsin statutory or code provision. The response to this letter must include the State's plan, with a schedule and milestones, for promulgating a rule equivalent to 40 C.F.R. § 122.50 if Wisconsin permits or wants to permit part of a discharger's process wastewater to be disposed into wells or POTWs or by land application.

21. The federal rule at 40 C.F.R. § 124.56 contains a description of elements to be included in fact sheets, including where explanations of specific permit conditions are required. Wisconsin's rules do not appear to have an equivalent provision. The response to this letter must identify the required rule provisions or include the State's plan, with a schedule and milestones, for promulgating a rule equivalent to 40 C.F.R. § 124.56.

22. The federal rule at 40 C.F.R. § 124.10 requires that draft permits be sent to a variety of agencies as well as the applicant. We understand that Wisconsin provides electronic access to information regarding a permit application. Wisconsin's response to this letter must explain how its practice of providing notice is equivalent to the public notice requirement found at § 124.10(c) or what steps, taken on what timetable, the State will take to cure deficiencies in the State analog.

23. Wisconsin law at Wis. Stat. § 30.2022(1) provides that "activities affecting waters of the state, as defined in s. 281.01 (18), that are carried out under the direction and supervision of the department of transportation in connection with highway, bridge, or other transportation project design, location, construction, reconstruction, maintenance, and repair are not subject to the prohibitions or permit or approval requirements specified under ... chs. 281 to 285 or 289 to 299." This provision does not conform to 40 C.F.R. §§ 123.1(g)(1) (requiring approved states to

² The certification provided at 40 C.F.R. § 122.22(d) states: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

prohibit point source discharges including, but not limited to, storm water discharges as provided in 40 C.F.R. § 122.26, unless such discharges are in compliance with a permit issued under the federally approved state program) and 123.25(a)(4) (providing that approved states shall require any person who discharges or proposes to discharge to apply for a permit).

Wis. Admin. Code § NR 216.42(5) (which appears to implement Wis. Stat. § 30.2022(1) and (2) with respect to storm water discharges from Department of Transportation (DOT) construction sites) exempts DOT project from NPDES permit coverage by providing that such discharges “shall be deemed to be in compliance with s. 283.33, Stats., and the requirements of ch. NR 216, Subchapter III, if the project from which the discharges originate is in compliance with Trans 401 Wis. Admin. Code and the liaison cooperative agreement between WDNR and DOT. . Unless EPA formally approves the division of NPDES permitting responsibility between WDNR and DOT (or any other state agency), and DOT prohibits discharges without a permit, Wisconsin cannot simply exempt DOT projects from NPDES permitting requirements. If the State has divided permitting authority for various categories of projects, the State’s response to this letter must describe the division of permitting authority. EPA must review and approve any agreement to divide permitting authority before any permits issued by DOT or any other agency of the State will be considered equivalent to NPDES permits. Such a review, if it occurs, is intended to ensure that the implementing agencies have legal authority and are acting consistent with federal program requirements including permit issuance; sufficiency of public notice, hearing, and judicial review requirements; compliance evaluation; and enforcement authority. If the State has divided permitting authority, then Wisconsin must include the State’s plan, with a schedule and milestones, for correcting the deficiency with Wis. Admin. Code § NR 216.42(5).

EPA has additional concerns if Wisconsin purports that Wis. Admin. Code § NR 216.42(5) establishes an NPDES “permit-by-rule.” For example, the authorities cited in that administrative code provision (Wis. Admin. Code § Trans 401 and the “liaison cooperative agreement”): (1) are not subject to EPA review and potential objection under 40 C.F.R. § 123.44, (2) are likely not subject to reissuance proceedings (including notice and the opportunity for the public to comment) once every five years, (3) likely do not require terms and conditions that are standard to all NPDES permits, and (4) may not be subject to judicial review as required for NPDES permits by 40 C.F.R. § 123.30. Furthermore, the text of the rule is not written to provide, consistent with Wis. Admin. Code § NR 205.08(5), that WDNR may require any point source covered by a general permit to obtain an individual permit, and that any person may petition WDNR to require an individual permit for a source covered by a general permit.

Wisconsin’s response to this letter must provide a plan with appropriate milestones for amending Wis. Stat. § 30.2022(1) and Wis. Admin. Code § NR 216.42(5) to conform to federal NPDES requirements.

24. The Wisconsin rules at Wis. Admin. Code §§ NR 216.42(4), (6), and (9) provide that certain dischargers of storm water “shall be deemed to hold a NPDES permit” or may be “determine[d] to be in compliance with permit coverage required under s. 283.33 Stats.” where such projects are regulated by the Wisconsin Department of Commerce or environmental programs other than the WPDES program. EPA has virtually identical concerns about these provisions as those

communicated in the second and third paragraphs of comment 23, above.³ In addition, we are concerned that Wis. Admin. Code § NR 216.42(6) may not conform to 40 C.F.R. 123.1(g)(1) and 123.25(a)(4). Wisconsin's response to this letter must provide a plan with appropriate milestones for amending all of these provisions to conform to federal NPDES requirements.

25. The Wisconsin rule at Wis. Admin. Code § NR 216.415(4) provides that a landowner of a construction site that is regulated by an authorized local municipal program is deemed to be covered under a department construction site storm water permit issued pursuant to Wis. Admin. Code § NR 216, Subchapter III. EPA has three concerns about this provision.

First, because the CWA does not provide for authorizing local governments to implement NPDES authorities, we are concerned about the apparent division of NPDES program responsibilities between WDNR and authorized municipalities. While the State's rule provides that authorized programs will grant permit coverage under WDNR's construction stormwater general permit, the rule also allows authorized municipalities to issue "equivalent" notice of intent forms, and appears to allow municipalities to take the lead for inspections and enforcement. While we encourage states to find supplemental resources to improve NPDES program implementation, the state's primary responsibility for NPDES program implementation, including compliance evaluation and enforcement, cannot be subdivided with local governments. We are concerned that although WDNR retains the ability to take enforcement actions for dischargers under authorized municipal programs, the provision lacks a mechanism to allow the timely notification of WDNR and consequently places the primary responsibility for compliance and enforcement with the authorized municipality, which is required to report to WDNR only an annual "estimate" of "the number of construction site inspections performed and citations issued." Wis. Admin. Code NR § 215.415(8)(b)(3). Wisconsin's response to this letter must provide an updated program description that explains, pursuant to 40 C.F.R. § 123.22, how Wisconsin's authorized municipality program is consistent with the State's retention of primary NPDES permitting and compliance evaluation responsibility under 40 C.F.R. §§ 123.25 – 123.27. If the State has not retained primary NPDES program responsibility where municipalities have become authorized, then the response to this letter must provide a plan with appropriate milestones for amending the existing state provisions to conform to federal NPDES requirements.

Second, Wis. Admin. Code § 216.415(4) appears to preclude the State from requiring a landowner who seeks coverage under the general permit to obtain, where appropriate, an individual permit under Wis. Admin. Code s. NR 205.08(5). While Wis. Admin. Code § 216.415(6) provides that an authorized municipality may deny coverage under the general permit, there appears to be no provision for an applicant to seek individual permit coverage (see 40 C.F.R. § 122.28(b)(3)).⁴ In its response to this letter, Wisconsin must provide a plan with

³ We understand that Wisconsin recently re-established a role for the Department of Commerce (now the Department of Safety and Professional Services) with respect to erosion control during the construction of commercial buildings. 2011 Wis. Act 32, § 2896 – 2905, 9135 (June 26, 2011).

⁴ We note that there is such a provision directing landowners to contact WDNR to resolve issues and seek permit coverage where projects involve wetlands, endangered species, and historic properties. Wis. Admin. Code § NR 216.415(7)(b).

appropriate milestones for amending Wis. Admin. Code § 216.415 to conform to federal NPDES requirements.

Third, while the federal rules governing general permits allow for the possibility that a state may choose not to require notice of intent forms be filed for general permit coverage for certain categories of dischargers (see 40 C.F.R. § 122.28(b)(2)(v)), this exemption does not apply to sites where five acres of land or more will be disturbed (see 40 C.F.R. § 122.28 (b)(2)(v) (made applicable to states by 40 C.F.R. § 123.25(a)(11))). Wisconsin's response to this letter must provide a plan with appropriate milestones for amending Wis. Admin. Code § NR 216.415(4) to conform to federal NPDES requirements.

26. The State's regulations at Wis. Admin. Code s. NR § 216.022 appear to create an exclusion for those Municipal Separate Stormwater System (MS4) dischargers which are in compliance with an Memorandum of Understanding with another agency of the State. Unless EPA formally approves the bifurcation of NPDES responsibilities between WDNR and other State agencies, and the other agencies prohibit discharges without a permit, WDNR cannot exclude these MS4s from NPDES permitting requirements. As stated in comment 22 above, EPA must review and approve any such arrangements regarding the divisibility of permitting authority to ensure that federal program requirements are met. The State's response to this letter must identify any MS4s that are the subject of such an arrangement, including a description of the authorities and responsibilities covered. It must also include the State's plan, with a schedule and milestones, for correcting the problem identified with Wis. Admin. Code NR NR § 216.022.

27. Wisconsin law at Wis. Stat. § 283.19(2)(b) defines the term "new source" to mean "any source, the construction of which commenced after the adoption of the standard of performance applicable to the category of sources of which it is a member." The definition appears in a section that requires WDNR to promulgate, by rule, standards of performance for classes and categories of point sources. Given its placement, the definition appears to have the effect of establishing that a source is a new source if construction commenced after WDNR promulgated applicable standards of performance by rule. The federal regulation at 40 C.F.R. § 122.2 defining "new source" defines such sources as those constructed after the adoption of standards of performance applicable to such source under CWA § 306, 33 U.S.C. § 1316. The State definition of new source, therefore, appears to provide an exemption from new source performance standards between the date of federal promulgation and the date of State adoption. In its response to this letter, Wisconsin must explain how it will address the deficiency noted in this comment, either through an amendment to the statute or corrective rulemaking (and associated milestones and timetables).

28. To ensure that substances are not present in amounts that are acutely harmful to aquatic life in all surface waters, including those portions of mixing zones normally inhabitable by aquatic life, Wis. Admin. Code NR NR §§ 106.06(3)(b), 106.32(2)(b), and 106.87(1) provide that effluent limitations shall be set equal to the final acute value (FAV). The State rule as written appears to deviate from the federal requirement at 40 C.F.R. § 122.44(d)(1)(vii)(A), which provides that WQBELs must be derived from and comply with water quality standards, in the following three instances:

(a) Acute water quality criteria will be exceeded in a stream or river when the effluent

limit is equal to the FAV and the effluent flow rate is one-half or more of the flow rate in the receiving waters;

(b) Limitations set equal to the FAV may not meet the requirements for mixing zones in Wis. Admin. Code NR § 102.05(3)(b); and

(c) A discharge equal to the FAV may cause chronic toxicity absent companion limits based on chronic water quality criteria.

In its response to this letter, Wisconsin must explain how it will address the deficiencies noted in this comment. If Wisconsin asserts that it has the authority necessary to address these deficiencies, the State must provide a written opinion from the Attorney General specifically identifying what authority the State will use to set effluent limits less than the FAV in the situations identified in comment 25 (a) – (c). If the State lacks the authority to implement 40 C.F.R. § 122.44(d)(1)(vii)(A), then Wisconsin must include the State’s plan, with a schedule and milestones, for correcting the deficiencies noted above.

29. The Wisconsin rule at Wis. Admin. Code NR § 106.13 provides, in part, that WNDR “shall, within its capabilities, ... establish an appropriate compliance schedule” where leachate from a solid waste facility affects the ability of a POTW to meet WQBELs for toxic or organoleptic substances. The text of the rule leaves ambiguous whether the State is mandating the establishment of a compliance schedule or whether establishing such a schedule is discretionary. If the rule mandates a compliance schedule, the rule must be revised to be consistent with 40 C.F.R. § 122.47. In its response to this letter, Wisconsin must explain how the rule operates and how it will address any deficiency through corrective rulemaking.

30. The Wisconsin rule at Wis. Admin. Code NR § 106.32(2)(a) provides that ammonia limits based on acute water quality criteria shall be expressed as daily maxima. For continuous discharges, 40 C.F.R. § 122.45(d) provides that effluent limits must be expressed as seven-day average and average monthly limits for POTWs,⁵ and maximum daily and average monthly limits for other discharges. Please identify in your response to this letter the basis for the State’s authority to supplement daily maximum limits with average monthly limits based on acute criteria for ammonia. If such authority does not exist, the response must include the State’s plan, with a schedule and milestones, for amending the rule so it is consistent with 40 C.F.R. § 122.45(d).

31. Wisconsin rules at Wis. Admin. Code NR §§ 106.32(2)(b)2, 106.32(3)(a)4.a, and 106.37(2) provide that Wisconsin shall or may add time to a compliance schedule so a permittee can gather data or perform demonstrations to justify a change in effluent limits. Section 502(17) of the CWA, 33 U.S.C. § 1362(17), defines a compliance schedule as an “enforceable sequence of actions or operations leading to compliance with an effluent limitation.” A demonstration or data collection that is intended to justify a change in an effluent limitation is not an action leading to compliance with a final effluent limitation under the CWA, and a schedule based solely on time needed to perform such a demonstration or collect such data is not appropriate under 40 C.F.R. § 122.47. Wisconsin must revise these provisions to make them consistent with

⁵ Section 5.2.3 of the *Technical Support Document for Water Quality-based Toxics Control*, EPA/505/2-90-001), recommends maximum daily and monthly average limits for toxic pollutants in POTW permits.

federal requirements. The response to this letter needs to include the State's plan, with a schedule and milestones, for amending these rules so they conform to 40 C.F.R. § 122.47.

32. Wis. Admin. Code NR § 106.07(8) provides that a permittee may ask for time to be added to compliance schedule to complete work with the intent of modifying limitations based on "secondary" (e.g., Tier II) values. While 40 C.F.R. Part 132, Appx. F, procedure 9, allows time to be added to a compliance schedule for this purpose within the Great Lakes basin, 40 C.F.R. § 122.47 does not allow time to be added outside the basin. The State provision must be modified to clarify that this exception applies only to dischargers within the Great Lakes basin.

33. Wisconsin rules at Wis. Admin. Code NR §§ 106.32(3)(c)(2) and 106.32(4)(d) provide that certain effluent limitations may be based on real time conditions. Does Wisconsin have current or administratively continued permits that implement either of these provisions? If so, how does the State receive and manage discharge monitoring reports and other data to evaluate compliance?

34. The Wisconsin rule at Wis. Admin. Code NR § 106.32(5)(c) provides that effluent limitations based on acute, four-day average chronic, and 30-day average chronic criteria must be expressed as daily maxima, weekly averages, and 30-day averages, respectively. For continuous dischargers, 40 C.F.R. § 122.45(d) provides that effluent limitations shall be expressed as seven-day average and average monthly limits for POTWs and maximum daily and average monthly limits for other dischargers. Under what authority can Wisconsin supplement limits that are expressed in accordance with Wis. Admin. Code NR § 106.32(5)(c) such that permits comply with the requirements of 40 C.F.R. § 122.45(d)? If such authority does not exist, the response must include the State's plan, with a schedule and milestones, for amending the rule so it conforms to 40 C.F.R. § 122.45(d).

35. The federal rule at 40 C.F.R. § 122.44(d) requires a permit issuing agency to determine whether pollutants are or may be discharged at a level that will cause, have a reasonable potential to cause, or contribute to an in-stream excursion beyond a water quality criterion, including a criterion for ammonia. To the extent that an NPDES authority makes a determination in the affirmative, the federal rule requires the permit to include effluent limits which are derived from and comply with water quality standards. Wis. Admin. Code NR § 106.33(2) provides that the State may not include ammonia limitations in a permit when a calculated WQBEL is greater than 20 mg/L in the summer or 40 mg/L in winter. EPA is concerned that the word "may" prevents Wisconsin from setting WQBEL despite a finding that a discharge will cause, have a reasonable potential to cause, or contribute to an excursion. Additionally, EPA is concerned that, as written, the State's provision provides discretion to refrain from setting limits when the State finds that a discharge will cause, have a reasonable potential to cause, or contribute to an excursion. In its response to this letter, Wisconsin must explain how it will address the concern noted in this comment, either through corrective rulemaking or by citing existing, specific authority in a written explanation from the Attorney General.

36. The Wisconsin rule at Wis. Admin. Code NR § 106.34(2) provides that, except for discharges to outstanding and exceptional resource waters, "if the department determines that a water quality based ammonia effluent limitation in effect in a permit as of March 1, 2004 may be

increased in the next reissuance of that permit based solely on the application of the procedures in this subchapter, then the inclusion of the increased ammonia effluent limitation in the reissued permit is not subject to the provisions of ch. NR 207.” For discharges to waters other than outstanding and exceptional resource waters, the rule does not appear to conform to § 301(b)(1)(C) of the CWA, 33 U.S.C. § 1311(b)(1)(C), and 40 C.F.R. § 122.44(d). In its response to this letter, Wisconsin must explain how it will address the deficiency noted in this comment, either through corrective rulemaking or by citing existing, specific authority in a written explanation from the State’s Attorney General.

37. Wis. Admin. Code NR § 106.37(1) allows compliance schedules greater than five years when an ammonia variance has been granted. 40 C.F.R. § 122.47 provides that a permit may include a compliance schedule when appropriate. It is not appropriate to provide a compliance schedule to meet an effluent limitation based on a variance from water quality standards. Therefore, the State provision needs to be modified to remove the possibility that a compliance schedule can be used to meet an effluent limitation that is based on a variance from water quality standards.

38. Wis. Admin. Code NR § 106.38 contains a process through which the owner or operator of a stabilization pond or lagoon system can obtain a variance from ammonia water quality criteria. Variances require EPA approval. Therefore, the State provision should, but does not have to, explain or reference Wisconsin’s process to seek EPA approval of proposed variances.

39. Wis. Admin. Code NR § 106.83(2) contains a process through which a discharger can obtain a variance from chloride water quality criteria. Variances require EPA approval. Therefore, the State provision should, but does not have to, explain or reference Wisconsin’s process to seek EPA approval of proposed variances.

40. Wis. Admin. Code NR § 106.88(1) provides, in part, that Wisconsin may include a WQBEL for chloride in a permit if such a limitation is deemed necessary in accordance with Wis. Admin. Code NR § 106.85. Use of the word “may” in this provision appears to make the establishment of a WQBEL discretionary. 40 C.F.R. § 122.44(d) mandates WQBELs whenever the permit issuing agency determines that a pollutant is present in a discharge at a level which will cause, have a reasonable potential to cause, or contribute to an excursion beyond a water quality criterion. Wisconsin must revise the rule to provide that a WQBEL shall be established when such a limit is deemed necessary.

The same rule allows Wisconsin to include a compliance schedule in a permit even when a discharger can meet a chloride WQBEL. 40 C.F.R. § 122.47 allows compliance schedules in permits when appropriate. It is not appropriate to include a compliance schedule in a permit when a discharger can meet an effluent limitation upon issuance of the permit. Therefore, the State provision must be modified to remove the possibility that a compliance schedule can be used when a discharger can meet an effluent limitation upon issuance of the permit, or the State should explain how its implementation of this provision is consistent with the described limitation set out in the federal program requirement.

41. Wis. Admin. Code NR § 106.88(4) provides that effluent limitations based on acute criteria shall be expressed as daily maxima and limitations based on chronic criteria shall be expressed

as weekly averages. For continuous dischargers, 40 C.F.R. § 122.45(d) provides that effluent limitations shall be expressed as seven-day average and average monthly limits for POTWs; and maximum daily and average monthly limits for other dischargers. Under what authority can Wisconsin supplement limits that are expressed in accordance with Wis. Admin. Code NR § 106.88(4) such that permits comply with the requirement of 40 C.F.R. § 122.45(d)? If such authority does not exist, the response to this letter must include the State's plan, with a schedule and milestones, to bring its regulation into conformity with the federal rule.

42. The Wisconsin rules at Wis. Admin. Code NR §§106.89(2) and (3), provide that where WQBELs for chloride are deemed necessary pursuant to Wis. Admin. Code NR § 106.87(1), whole effluent toxicity limitations (WET) may be held in abeyance during a source reduction period if chloride exceeds a threshold of 2,500 mg/L, or if the effluent concentration is less than 2,500 mg/L but exceeds the calculated acute WQBEL, where chloride is the sole source of acute toxicity. 40 C.F.R. § 122.44(d)(1)(v) provides, in part, that limitations on WET are not necessary when the permit-issuing agency demonstrates in the fact sheet or statement of basis for the permit, using the procedures in 40 C.F.R. § 122.44(d)(1)(ii), that chemical-specific limitations are sufficient to attain and maintain the applicable numeric and narrative water quality standards. During discussions between EPA and WDNR, Wisconsin explained that it implements Wis. Admin. Code NR §§ 106.89(2) and (3) in accordance with 40 C.F.R. § 122.44(d)(1)(v) with respect to permits that contain a chemical-specific WQBEL for chloride. Please confirm that this is the State's approach. If corrective rulemaking is required to address a deficiency in the rule, the State must explain in its response to this letter what timetable the State will follow to address the deficiency.

EPA's review suggests that Wis. Admin. Code NR §§ 106.89(2) and (3) do not conform to the CWA § 301(b)(1)(C) and 40 C.F.R. § 122.44(d) (requiring a WQBEL when a discharge will cause, have a reasonable potential to cause, or contribute to an excursion beyond an applicable water quality criterion expressed in terms of toxicity) when Wisconsin holds a WET limit in abeyance because chloride exceeds a threshold but the permit does not contain a chemical-specific WQBEL for chloride. Another interpretation would be that the State could implement "held in abeyance" such that the permit includes the WET limit but compliance with the limit is not required until the end of a compliance schedule. Therefore, in response to this letter, please explain how Wisconsin implements Wis. Admin. Code NR §§ 106.89(2) and (3) when chloride exceeds one or more of the specified thresholds, and provide the State's explanation of how these provisions are consistent with the federal requirement, or provide the State's plan to correct these provisions to make them consistent with the federal requirement.

43. The Wisconsin regulation at Wis. Admin. Code NR § 106.91 allows Wisconsin to set a chloride limit, other than the WQBEL, when a POTW is not able to meet a WQBEL due to indirect discharges from a public water system treating water to meet the primary maximum contaminant levels specified in Wis. Admin. Code NR § 809. This rule does not conform to CWA § 301(b)(1)(C) and 40 C.F.R. § 122.44(d). Therefore, the State provision must be modified to be consistent with the federal requirement. To the extent that Wisconsin implements the rule as a variance, such variances are subject to EPA approval.

44. (a) Wisconsin's definition of "point source" in Wis. Admin. Code NR § 205.03(27) does not

specify landfill leachate collection systems even though such systems are expressly included in the federal definition in 40 C.F.R. § 122.2 [and applicable to state programs, see 40 C.F.R. § 123.2]. During discussions, WDNR explained that the agency has issued WPDES permits for discharges from landfill leachate collection systems. In response to this letter, please provide an explanation of Wisconsin's authority to issue WPDES permits for landfill leachate collection systems and provide the permit numbers for such permits and the names of the permittees.

(b) Wisconsin's definition of "pollutant" in Wis. Admin. Code NR § 205.03(28) does not specify filter backwash as a pollutant even though filter backwash is expressly enumerated as a pollutant in 40 C.F.R. § 122.2 [and applicable to state programs, see 40 C.F.R. § 123.2]. In its response to this letter, Wisconsin must explain how it will address the deficiency noted in this comment, either through corrective rulemaking or by citing existing, specific authority in a written explanation from the State's Attorney General.

45. The federal regulation at 40 C.F.R. § 122.5 explains the effect of a permit. It includes permit as a shield, use of a permit as an affirmative defense, prohibition of the use of a permit as a property interest, and prohibition of the use of a permit as an authorization to injure persons or property. This provision appears to have no equivalent in Wisconsin's rules. In its response to this letter, Wisconsin must explain how it will address the deficiency noted in this comment, either through corrective rulemaking or by citing existing, specific authority in a written explanation from the State's Attorney General.

46. The federal regulation at 40 C.F.R. § 122.21(o) contains a provision for expedited variance procedures or time extensions for filing requests for variances. The Wisconsin rules do not contain this provision. Is this an instance where Wisconsin wishes to implement a more stringent authorized program, or is this an oversight? In its response to this letter, Wisconsin should explain that it implements a more stringent program or how it will address this comment, either through corrective rulemaking or by citing existing, specific authority in a written explanation from the State's Attorney General.

47. Wisconsin's regulations at Wis. Admin. Code NR § 205.07(1)(g) provide that the signatory to a permit can be a "person authorized by one of those officers or officials and who has responsibility for the overall operation of the facility or activity regulated by the permit." However, there is no requirement for how the authorization will be documented or any requirements that apply. While EPA's regulations at 40 C.F.R. § 122.22 do not require a demonstration that a corporate officer has the requisite authority to sign permit documents, Wisconsin's regulations appear to allow non-corporate officers to sign such documents without providing an accountable process for such delegation of authority. In its response to this letter, Wisconsin should explain how it will address the deficiency noted in this comment, either through corrective rulemaking or by citing existing, specific authority in a written explanation from the State's Attorney General.

48. Wisconsin's regulations do not include permit "termination" as a consequence of violating the permit, as provided by the federal regulations at 40 C.F.R. § 122.41(a). Wisconsin should explain whether and how its rules are consistent with this federal requirement, even if the specific terminology used in the State's rules differ. If corrective rulemaking is required to

address this deficiency, the State must explain in its response to this letter what timetable the State will follow to address this potential deficiency.

49. The federal regulations at 40 C.F.R. § 122.41(l)(1)(i) require that a permitted facility must provide notice where, because of an alteration or addition to a permitted facility, the facility may meet one of the criteria for defining a new source (40 C.F.R. § 122.29(b)). Wisconsin should explain how its provision at Wis. Admin. Code NR § 205.07(1)(q)(1) is equivalent to this federal requirement. If corrective rulemaking is required to address this potential deficiency, the State must explain in its response to this letter what timetable the State will follow.

50. Federal regulations at 40 C.F.R. § 124.5 (a) – (d) provide for termination of permits. Wisconsin regulations do not appear to provide for permit termination. Specifically, the Wisconsin regulations lack an equivalent provision for “notice of intent to terminate,” as specified in 40 C.F.R. § 124.5(d). The State must explain how its regulations are consistent with the federal requirement. If corrective rulemaking is required to address this deficiency, the State must explain in its response to this letter what timetable the State will follow.

51. Federal regulations at 40 C.F.R. § 124.11 provide that “any interested person . . . may request a public hearing, if no hearing has already been scheduled,” as long as the request is in writing and states the nature of the issues proposed to be raised in the hearing. The regulation at 40 C.F.R. § 124.12 provides that a hearing shall be held if the Director finds on the basis of requests that there is significant public interest in the draft permit. The Wisconsin rules governing public hearings appear to be set out in Wis. Admin. Code NR § 203.10(5) and Wis. Stat. 283.49 (public hearing), and limit hearing requests to those made by groups of five or more petitioners. Wisconsin must explain how its provisions for allowing requests for hearing are consistent with federal requirements. If corrective rulemaking is required to address this deficiency, the State must explain in its response to this letter what timetable the State will follow to address this potential deficiency.

52. Wis. Admin. Code NR § 216.21(2)(b) excludes access roads and rail lines from tier 2 category industries. They are included within the federal analog at 40 C.F.R. § 122.26(b)(14). In its response to this letter, Wisconsin must explain how it will address the deficiency noted in this comment, either through corrective rulemaking or by citing existing, specific authority in a written explanation from the State’s Attorney General.

53. Wis. Admin. Code NR § 216.21(3)(e)(2) does not require that the facility submit its latitude and longitude when certifying ‘no exposure.’ This information is required under 40 C.F.R. § 122.26(g)(4)(ii). In its response to this letter, Wisconsin must explain how it will address the deficiency noted in this comment, either through corrective rulemaking or by citing existing, specific authority in a written explanation from the State’s Attorney General.

54. Wis. Admin. Code NR § 216.42(1) requires a permit for discharges from construction sites that are one or more acre in size. However, Wisconsin does not include the requirement found in 40 C.F.R. § 122.26(b)(15)(i) that disturbances less than one acre, when part of a common plan of development that disturbs more than one acre, also require permit coverage for discharges. Wisconsin’s definition of “construction site” at Wis. Admin. Code NR § 216.002(2) includes

common plan language but does not explicitly include areas less than one acre. In its response to this letter, Wisconsin must explain how it will address the deficiency noted in this comment, either through corrective rulemaking or in by citing existing, specific authority in a written explanation from the State's Attorney General.

55. Under 40 C.F.R. § 122.26(b)(2), illicit dischargers to an MS4 are defined as "any discharge to a municipal separate storm sewer that is not composed entirely of storm water except discharges pursuant to a NPDES permit. . . and discharges resulting from fire fighting activities." The State definition of illicit discharges appears to exempt many more classes of activities from the definition. As a result, the requirement that MS4s identify illicit discharges pursuant to Wis. Admin. Code NR § 216.07(3), appears less comprehensive, and therefore less stringent, than the federal requirement found at 40 C.F.R. § 122.34(b)(iii), which requires MS4s to address all illicit discharges ". . . which are [] found to be a significant contributor of pollutants to the [MS4]." In its response to this letter, Wisconsin must explain how it will address the deficiency noted in this comment, either through corrective rulemaking or by citing existing, specific authority in a written explanation from the State's Attorney General.

56. Wis. Admin. Code NR § 216.07(8) provides for an annual report. The rule does not include the requirements of 40 C.F.R. § 122.34(g)(3)(v) pertaining to notice that the permittee is relying on another government entity to satisfy some of the permit obligations. In its response to this letter, Wisconsin must explain how it will address the deficiency noted in this comment, either through corrective rulemaking or in a written explanation from the State's Attorney General.

57. The annual report required by Wis. Admin. Code NR § 216.07 lacks provisions equivalent to 40 C.F.R. § 122.42(c)(2) (proposed changes to the storm water management programs that are established as permit condition). In its response to this letter, Wisconsin must explain how it will address the deficiency noted in this comment, either through corrective rulemaking or by citing existing, specific authority in a written explanation from the State's Attorney General.

58. Wisconsin's definition of "waters of the state" in Wis. Admin. Code NR §205.03(44) does not refer to mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, or playa lakes. These categories are included in the definition of "waters of the United States" as set out at 40 C.F.R. § 122.2, which includes these categories where "the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters." Are the more specific categories in the federal definition included under the umbrella language of Wis. Admin. Code NR § 205.03(44) which states "and other surface or groundwater, natural or artificial, public or private within the state or under its jurisdiction. . . ." In its response to this letter, Wisconsin must explain how it will address the potential deficiency noted in this comment, either through corrective rulemaking or in a written explanation from the State's Attorney General citing existing, specific authority

59. Wisconsin appears to exempt from NPDES permitting "the disposal of solid wastes, including wet or semi-liquid wastes, at a site or operation licensed pursuant to chs. NR 500 to 536, except as required for municipal sludge in ch. NR 204 or where storm water permit coverage is required under ch. NR 216." (Wis. Admin. Code NR § 200.02.) This exclusion goes beyond those exclusions enumerated at 40 C.F.R. § 122.3. Wisconsin must explain whether the

State prohibits discharge of such materials and whether Wisconsin requires permits for such discharges when they occur. If corrective rulemaking is required to address this deficiency, the State must explain in its response to this letter what timetable the State will follow to address this deficiency.

60. Wisconsin appears to exempt from NPDES permitting “discharges from private alcohol fuel production systems as exempted in s. 283.61, Stats.” Wis. Admin. Code NR § 200.03(3)(f), and Wis. Stat. § 283.61 provide that the exemption applies where the waste product “discharge or disposal is confined to the property of the owner.” (Wis. Stat. § 283.61(2).) Does Wisconsin allow the discharge exemption where waters of the United States are located within, or traverse through, privately-owned property? In its response to this letter, Wisconsin must explain how it will address the deficiency noted in this comment, either through statutory amendment, corrective rulemaking, or by citing existing, specific authority in a written explanation from the State’s Attorney General.

61. Wisconsin appears to lack rules that establish permit application requirements for the following categories of dischargers: existing manufacturing, commercial, mining, and silvicultural dischargers (40 C.F.R. § 122.21(g)); aquatic animal production facilities (40 C.F.R. § 122.21(i)); new sources and new discharges (40 C.F.R. § 122.21(k)); and facilities with cooling water intake structures (40 C.F.R. § 122.21(r)). Wisconsin must document where permit application requirements for these categories of discharges are set out. If corrective rulemaking is required to address a deficiency, the State must explain in its response to this letter what timetable the State will follow.

62. Wisconsin regulations allow a permit to be “suspended,” an action that is not included in the federal regulations (federal regulations provide for permit revocation and reissuance or permit termination (40 C.F.R. § 122.41(f)). The federal regulations contemplate “revocation and reissuance” as a separate action from termination for cause. Revocation and reissuance is generally used if transfer of a permit (because of ownership change) is not appropriate or if there has been a significant change in the nature of a discharge to warrant a new permit. The federal regulations provide that a permit may be terminated for cause, as set out in 40 C.F.R. § 122.64. It is unclear whether Wisconsin (which does not use the term “termination”) is able to exercise equivalent authorities to those permit actions identified in 40 C.F.R. § 122.41(f). The State must document the scope and basis of its authorities to cover the requirements in 40 C.F.R. § 122.41(f). If corrective rulemaking is required to address a deficiency, the State must explain in its response to this letter what timetable the State will follow.

63. Wisconsin rules appear to lack a provision which allows the State to assess multiple penalties for multiple instances of knowingly making false statements. This requirement is found in the federal regulations at 40 C.F.R. § 123.27. Wisconsin must document where it has the equivalent authority required to address cases involving multiple false statements. If corrective rulemaking is required to address this deficiency, the State must explain in its response to this letter what timetable the state will follow to address this deficiency.

64. Wisconsin does not appear to have a provision equivalent to 40 C.F.R. § 123.27(d), which provides for public participation in the enforcement process (including provisions to allow

intervention as of right in any civil or administrative action; or assurance that the State will provide written responses to requests to investigate and respond to citizen complaints, provide for permissive intervention, and provide public notice and comment on proposed settlements). Wisconsin must document where it has the equivalent authority required by 40 C.F.R. § 123.27(d). If corrective rulemaking is required to address this deficiency, the State must explain in its response to this letter what timetable the State will follow to address this deficiency.

65. Federal regulations require the preparation of a draft permit where a state determines to proceed to permit issuance following receipt of a complete permit application. Wisconsin appears to lack provisions equivalent to 40 C.F.R. § 124.6, which provides the informational and procedural requirements for preparation of a draft permit. The State must document where it has the equivalent authority required by 40 C.F.R. § 124.6. If corrective rulemaking is required to address this deficiency, the State must explain in its response to this letter what timetable the State will follow to address this deficiency.

66. Federal regulations require the preparation of a fact sheet for every NPDES facility or activity, with fact sheet contents and processes outlined in 40 C.F.R. §§ 124.8 and 124.56. Wisconsin appears to require fact sheets only for discharges having a volume of more than 500,000 gallons/day (and no fact sheets are required for storm water dischargers). Wisconsin must explain whether and how it has the authority to meet the requirements of 40 C.F.R. §§ 124.8 and 124.56. If corrective rulemaking is required to address this deficiency, the State must explain in its response to this letter what timetable the State will follow to address this deficiency.

67. The Wisconsin rules for small MS4s do not contain provisions equivalent to 40 C.F.R. § 122.34(g)(1) (required storm water management program evaluation) and (2) (records must be available to the public). In its response to this letter, Wisconsin must explain how it will address the deficiency noted in this comment, either through corrective rulemaking or by citing existing, specific authority in a written explanation from the State's Attorney General.

68. The CWA requires that effluent limitations will be established "in no case later than 3 years after the date such limitations are established, and in no case later than March 31, 1989." 33 U.S.C. § 1311(b)(2)(F). Wisconsin law requires effluent limitations to be established "not later than 3 years after the date effluent limitations are established, but in no case before July 1, 1984 or after July 1, 1987. Wis. Stat. § 283.13(2)(f). The State must explain the basis for the discrepancy of dates given in the State provision. If a statutory amendment is required to address this deficiency, the State must explain in its response to this letter what timetable the State will follow to address this deficiency.

69. Wisconsin law appears to allow the State to waive compliance with any requirement in Wis. Stat. § 283 to prevent an emergency threatening public health, safety, or welfare. This exemption is not provided for in the federal program. State staff explained that they do not believe this provision has ever been implemented. The State must explain the intent of the provision and how this exemption is consistent with the federal program. If statutory amendment is required to address this deficiency, the State must explain in its response to this letter what timetable the

State will follow to address this deficiency.

70. Wis. Admin. Code NR §106.05(8) provides that a permittee may request “alternative limits” when an analytical test method is not sufficiently sensitive, despite a determination by the State that the discharge may cause or contribute to an excursion beyond the applicable water quality standards. Any permit that included such limits would not conform to § 301(b)(1)(C) of the Clean Water Act and 40 C.F.R. § 122.44(d). In its response to this letter, Wisconsin must explain how it will address the deficiency noted in this comment, either through corrective rulemaking or by citing existing, specific authority in a written explanation from the State’s Attorney General.

71. Wis. Admin. Code NR § 106.06(2) contains a note expressing the State’s intent to develop a rule to phase-out mixing zones for existing dischargers of bioaccumulative chemicals of concern (BCC). Wisconsin must establish such a rule for discharges within the Great Lakes basin. Under 40 C.F.R. Part 132, such mixing zones for Great Lakes dischargers are being phased out beginning in November 2010. In its response to this letter, Wisconsin needs to provide a plan, with a schedule and milestones, for revising the rule to phase out mixing zones for BCCs.

72. When calculating effluent limitations, Wis. Admin. Code NR §§ 106.06(4)(c)(5), (8), and (10) mandate that the State allow the discharge to be diluted with a defined quantity of the receiving water. These provisions appear to allow continued violations of water quality standards when the receiving waters are impaired for a pollutant that is present in a discharge. In addition, it is unclear whether the dilution mandate is subject to, and constrained by, the mixing zone provisions in Wis. Admin. Code NR § 102.05(3). In its response to this letter, Wisconsin needs to explain how it will address the deficiency noted in this comment, either through corrective rulemaking or in a written explanation from the State’s Attorney General. A written opinion of the State Attorney General must include an identification of the authority under which the State will set effluent limitation which are derived from and comply with water quality standards, as required by § 301(b)(1)(C) of the CWA and 40 C.F.R. § 122.44(d), the provisions of §§ 106.06(4)(c), (5), and (8) notwithstanding.

73. Wis. Admin. Code NR §§ 106.06(4)(c) 5 and 10 mandate that the State provide time for a discharger to complete mixing demonstrations. These provisions are contrary to the federal regulation at 40 C.F.R. § 122.47 to the extent that they require the time to be included in a compliance schedule in a permit. Please clarify whether the rules require the State to provide time before permit issuance or as a compliance schedule. If corrective rulemaking is required, the State must explain in its response to this letter what timetable the State will follow to address this deficiency.

74. Wis. Admin. Code NR §§ 106.08 and 106.09 mandate that the State include effluent limitations for whole effluent toxicity (WET) when it determines that such limits are necessary based on an evaluation of five or more samples. The rule includes a procedure for assessing effluent variability in this circumstance. The rule allows limitations for WET when fewer than five samples are available, but it does not include procedures that the State will use to assess variability in this circumstance. Wisconsin needs to revise the rule to mandate limitations when it determines, based on four or fewer samples, that a discharge will cause, have a reasonable potential to cause, or contribute to an excursion above a WET criterion. In addition, the State

needs procedures for assessing effluent variability when four or fewer samples exist. See 40 C.F.R. § 122.44(d). If corrective rulemaking is required to address this deficiency, the State must explain in its response to this letter what timetable the State will follow to address this deficiency.

75. Wisconsin law at Wis. Stat. § 227.10(2m) was recently amended to provide that “No agency may implement or enforce any standard, requirement, or threshold, including as a term or condition of any license issued by the agency, unless that standard, requirement, or threshold is explicitly required or explicitly permitted by statute or by a rule that has been promulgated in accordance with this subchapter.”⁶ The response to this letter must include a statement from the Attorney General explaining the relationship between the limitation in Wis. Stat. § 227.10(2m), the permitting and enforcement provisions set forth in Wis. Stat. § 283 and the applicable administrative code provisions, and the federal requirements for permitting and enforcement authority for state NPDES permit programs set out in 40 C.F.R. §§ 123.25 and 123.27. If corrective legislation or rulemaking is required to ensure that the State has permitting and enforcement authority commensurate with 40 C.F.R. §§ 123.25 and 123.27, the State must explain in its response to this letter the timetable and milestones the State will follow to address this potential deficiency.

⁶ 2011 Wis. Act 21, § 1r (May 23, 2011).

New Chemical Test Methods

ASTM D6508, Dissolved Inorganic Anions by Capillary Ion Electrophoresis.
QuikChem Method 10-204-00-1-X, Cyanide using MICRO DIST and flow injection analysis.
Kelada-01, Automated Methods for Total Cyanide, Acid Dissociable Cyanide, and Thiocyanate.
Method CP-86.07, Chlorinated Phenolics by In situ Acetylation and GC/MS.
EPA Method 245.7, Mercury by Cold Vapor Atomic Fluorescence Spectrometry.
Standard Methods 4500-Cl, Chlorine by Low Level Amperometry.
ASTM D6888-04 Available Cyanide by Ligand Exchange-FIA.
ASTM D 6919-03, Cations and Ammonium in by Ion Chromatography.
Standard Method 4500-Cl-D. Chloride by Potentiometry.
ASTM D512-89 Chloride by Ion Selective Electrode.
Standard Method 4500-CN-F, Cyanide by Ion Selective Electrode.
ASTM D2036-98 A, Cyanide by Ion Selective Electrode.
Standard Method 4500-S2-G, Sulfide by Ion Selective Electrode.
ASTM D4658-92, Sulfide by Ion Selective Electrode.
Standard Method 4500-NO3-D, Nitrate by Ion Selective Electrode.
Method D99-003, Free Chlorine by Color Comparison Test Strip.
Method OIA-1677, DW Available Cyanide by Ligand Exchange_FIA.
Radium-226 and 228 by Gamma Spectrometry.
EPA Method 327.0, Chlorine Dioxide by Colorimetry.
EPA Method 300.1 for Anions.
EPA Method 552.3 for Dalapon.
Determination of Radium-226 and Radium-228 in Drinking Water by Gamma-ray Spectrometry Using HPGE or Ge(Li) Detectors.

Updated Chemical Test Methods

Method 200.2, Total Recoverable Elements Digestion.
Method 200.8, Metals by Inductively Coupled Plasma-Mass Spectrometry.
Method 200.9, Metals by Stabilized Temperature Graphite Furnace Atomic Absorption.
Method 218.6, Hexavalent Chromium by Ion Chromatography.
Method 300.0, Inorganic Anions by Ion Chromatography.
Method 353.2, Nitrate and Nitrite by Colorimetry.
Revisions to Methods 180.1, 200.7, 245.1, 335.3, 350.1, 351.2, 353.2, 365.1, 375.2, 410.4, and 420.4

Updated Versions of Currently Approved Methods

This rule approved about 200 updated methods, including:
An errata sheet for the whole effluent toxicity manuals.
74 newer versions of ASTM methods.
88 newer versions of Standard Methods from the 18th, 19th and 20th editions, but not the 21st.
19 methods published in the 16th edition of Official Methods of Analysis of AOAC International, 1995

Method Modifications, Analytical Requirements, and Reporting Requirements

The final rule includes a new section to introduce greater flexibility in the use of approved methods

The section describes the circumstances in which approved methods may be modified and the requirements that analysts must meet to use these modified methods in required measurements without prior EPA

approval

Sample Collection, Preservation, and Holding Time Requirements,

The rule includes many detailed changes to Table II, including:

The general sample preservation temperature from has changed 4 C to < 6.00 C.

For metals other than boron, hexavalent chromium, and mercury, the EPA will allow sample preservation with nitric acid 24 hours prior to analysis. In other words, acid preservation in the field for metals is not required.

Clarification that the start of a holding time for a grab sample would start at the time of sample collection. The holding time for a composite sample would start at the time the last grab sample component is collected

Withdrawal of Methods

The rule deletes Methods 612 and 625 as approved procedures for 1,2-dichlorobenzene, 1,3-dichlorobenzene, and 1,4-dichlorobenzene, and withdraws approval for all oil and grease methods that use Freon-113 as an extraction solvent.. In addition, the rule withdraws 105 methods contained in the EPA's Methods for the Chemical Analysis of Water and Wastes for which approved alternatives published by voluntary consensus standards bodies (i.e., ASTM and Standard Methods) are available. The methods that are deleted are listed below:

110.1	208.2	236.1	272.1	330.3
110.2	210.1	236.2	272.2	330.4
110.3	210.2	239.1	273.1	330.5
130.2	212.3	239.2	279.1	335.1
150.1	213.1	242.1	282.1	335.2
160.1	213.2	243.1	282.2	335.3
160.2	215.1	243.2	283.1	340.1
160.3	215.2	246.1	286.1	340.2
160.5	218.1	246.2	286.2	340.3
170.1	218.2	249.1	289.1	350.2
202.1	218.3	249.2	305.1	350.2
202.2	218.4	252.1	310.1	350.3
204.1	219.1	253.1	320.1	351.3
204.2	219.2	255.1	325.1	351.4
206.2	220.1	258.1	325.2	353.1
206.3	220.2	265.1	325.3	353.3
206.4	231.1	267.1	330.1	354.1
208.1	235.1	270.2	330.2	360.1
360.2	375.3	377.1	413.1	
365.2	375.4	405.1	415.1	
370.1	376.1	410.1	425.1	
375.1	376.2	410.2		

Message

From: Schiermeyer, Corry [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B0332276A9784253A5A78F39ECCF1F29-SCHIERMEYER]
Sent: 9/25/2019 4:58:54 PM
To: Mejias, Melissa [mejias.melissa@epa.gov]
Subject: RE: Water

Just making sure we didn't miss one!

-----Original Message-----

From: Mejias, Melissa <mejias.melissa@epa.gov>
Sent: Wednesday, September 25, 2019 12:56 PM
To: Schiermeyer, Corry <schiermeyer.corry@epa.gov>
Subject: RE: Water

That is correct. All other violations have been removed.

-----Original Message-----

From: Schiermeyer, Corry <schiermeyer.corry@epa.gov>
Sent: Wednesday, September 25, 2019 12:55 PM
To: Mejias, Melissa <mejias.melissa@epa.gov>
Subject: RE: Water

This letter still says 'violations' in the last paragraph. Is that correct?

-----Original Message-----

From: Mejias, Melissa <mejias.melissa@epa.gov>
Sent: Wednesday, September 25, 2019 10:53 AM
To: Schiermeyer, Corry <schiermeyer.corry@epa.gov>; Block, Molly <block.molly@epa.gov>; Beach, Christopher <beach.christopher@epa.gov>
Cc: McFaul, Jessica <mcfaul.jessica@epa.gov>; White, Elizabeth <white.elizabeth@epa.gov>
Subject: RE: Water

Of course, please find the letter attached. The date needs to be amended.

-----Original Message-----

From: Schiermeyer, Corry <schiermeyer.corry@epa.gov>
Sent: Wednesday, September 25, 2019 10:49 AM
To: Block, Molly <block.molly@epa.gov>; Beach, Christopher <beach.christopher@epa.gov>; Mejias, Melissa <mejias.melissa@epa.gov>
Cc: McFaul, Jessica <mcfaul.jessica@epa.gov>; White, Elizabeth <white.elizabeth@epa.gov>
Subject: RE: Water

Mel...could you send us all what you sent Beth?

-----Original Message-----

From: Block, Molly <block.molly@epa.gov>
Sent: Wednesday, September 25, 2019 10:48 AM
To: Beach, Christopher <beach.christopher@epa.gov>; Schiermeyer, Corry <schiermeyer.corry@epa.gov>
Cc: McFaul, Jessica <mcfaul.jessica@epa.gov>
Subject: RE: Water

Can you forward my way so I can get cracking on a script for susan?

-----Original Message-----

From: Beach, Christopher
Sent: Wednesday, September 25, 2019 10:06 AM
To: Schiermeyer, Corry <schiermeyer.corry@epa.gov>
Cc: McFaul, Jessica <mcfaul.jessica@epa.gov>; Block, Molly <block.molly@epa.gov>
Subject: Re: Water

I sent it home with AW last night. Trying to figure out if he looked at it yet.

Sent from my iPhone

> On Sep 25, 2019, at 8:59 AM, Schiermeyer, Corry <schiermeyer.corry@epa.gov> wrote:
>
> Do we have an updated water release with quote?
>
> Molly needs it. I will get her the final letter.
>
> Sent from my iPhone

>
>> On Sep 24, 2019, at 10:29 AM, McFaul, Jessica <mcfaul.jessica@epa.gov> wrote:
>>
>> This is the most recent version of the release that I edited and sent back to Doug, based on AAW's
comments below. Doug could say whether AAW has seen this version. Jess
>>
>> -----Original Message-----
>> From: McFaul, Jessica
>> Sent: Monday, September 23, 2019 1:31 PM
>> To: Benevento, Douglas <benevento.douglas@epa.gov>
>> Cc: Schiermeyer, Corry <schiermeyer.corry@epa.gov>
>> Subject: RE: Water
>>
>> Edits incorporated (plus one more from me for consideration). Looping Corry for her awareness. Jess
>>
>> -----Original Message-----
>> From: Benevento, Douglas <benevento.douglas@epa.gov>
>> Sent: Monday, September 23, 2019 12:10 PM
>> To: McFaul, Jessica <mcfaul.jessica@epa.gov>
>> Subject: FW: Water
>>
>>
>> -----Original Message-----
>> From: adm15.arwheeler.email <adm15.arwheeler.email@epa.gov>
>> Sent: Monday, September 23, 2019 11:36 AM
>> To: Benevento, Douglas <benevento.douglas@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>
>> Subject: Water
>>
>> On press release, my quote after obligation add a parenthetical (receiving its delegated authority in
19XX)
>>
>> Last sentence of quite has a typo, rewrite it to say
>>
>> "If California does not step up to its delegated responsibilities then EPA will be forced to take
actions."
>>
>> Sent from my iPhone
>> <09-23-2019 - DRAFT RELEASE - Water letter to CA AAW EDITS.docx>

Message

From: Schiermeyer, Corry [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B0332276A9784253A5A78F39ECCF1F29-SCHIERMEYER]
Sent: 9/25/2019 3:38:57 PM
To: Schiermeyer, Corry [schiermeyer.corry@epa.gov]
Subject: Re: Water

Date is up in the air now...today or tomorrow. Ryan needs to make a decision on what time to transmit. I suggested 5:30am tomorrow.

I need it today...I can share the PDF unsigned version on an embargo, but will need final signed before 5pm.

Ask Ryan about autopen

Sorry...OPA has media lead..not letter lead, but having this final impacts what we have planned!

Thank you!

Sent from my iPhone

> On Sep 25, 2019, at 11:32 AM, White, Elizabeth <white.elizabeth@epa.gov> wrote:
>
> What time do you need this by? It's going to take some time to edit this again. Does it need to be autopenned or is the Administrator signing it? Date today?
>
> Beth White
> Director, Office of the Executive Secretariat
> U.S. Environmental Protection Agency
> (202) 564-1781 direct
> Ex. 6 Personal Privacy (PP) cell
>
> -----Original Message-----
> From: Schiermeyer, Corry <schiermeyer.corry@epa.gov>
> Sent: Wednesday, September 25, 2019 11:15 AM
> To: White, Elizabeth <white.elizabeth@epa.gov>; Mejias, Melissa <mejias.melissa@epa.gov>; Block, Molly <block.molly@epa.gov>; Beach, Christopher <beach.christopher@epa.gov>
> Cc: McFaul, Jessica <mcfaul.jessica@epa.gov>
> Subject: RE: Water
>
> Yes...it has changed since Monday...
>
> -----Original Message-----
> From: White, Elizabeth <white.elizabeth@epa.gov>
> Sent: Wednesday, September 25, 2019 11:13 AM
> To: Schiermeyer, Corry <schiermeyer.corry@epa.gov>; Mejias, Melissa <mejias.melissa@epa.gov>; Block, Molly <block.molly@epa.gov>; Beach, Christopher <beach.christopher@epa.gov>
> Cc: McFaul, Jessica <mcfaul.jessica@epa.gov>
> Subject: RE: Water
>
> We did this letter Monday. Please see attached. Ryan has the original. Has this letter changed since Monday?
>
> Beth White
> Director, Office of the Executive Secretariat U.S. Environmental Protection Agency
> (202) 564-1781 direct
> Ex. 6 Personal Privacy (PP) cell
>
> -----Original Message-----
> From: Schiermeyer, Corry <schiermeyer.corry@epa.gov>
> Sent: Wednesday, September 25, 2019 11:11 AM
> To: White, Elizabeth <white.elizabeth@epa.gov>; Mejias, Melissa <mejias.melissa@epa.gov>; Block, Molly <block.molly@epa.gov>; Beach, Christopher <beach.christopher@epa.gov>
> Cc: McFaul, Jessica <mcfaul.jessica@epa.gov>
> Subject: RE: Water
>
> This is a different letter. This letter is to the Governor about water. The letter we released yesterday/Monday was to CARB and on air issues.
>
> This letter should be dated for September 26 as we will be transmitting early, early tomorrow morning.
>

> Thank you!

>

> -----Original Message-----

> From: White, Elizabeth <white.elizabeth@epa.gov>

> Sent: Wednesday, September 25, 2019 11:09 AM

> To: Mejias, Melissa <mejias.melissa@epa.gov>; Schiermeyer, Corry <schiermeyer.corry@epa.gov>; Block, Molly <block.molly@epa.gov>; Beach, Christopher <beach.christopher@epa.gov>

> Cc: McFaul, Jessica <mcfaul.jessica@epa.gov>

> Subject: RE: Water

>

> So is this the same letter we did the other day? I take it this letter changed since Monday? And this is the one that is going to the Governor?

>

> Beth White

> Director, Office of the Executive Secretariat U.S. Environmental Protection Agency

> (202) 564-1781 direct

> Ex. 6 Personal Privacy (PP) cell

>

> -----Original Message-----

> From: Mejias, Melissa <mejias.melissa@epa.gov>

> Sent: Wednesday, September 25, 2019 10:53 AM

> To: Schiermeyer, Corry <schiermeyer.corry@epa.gov>; Block, Molly <block.molly@epa.gov>; Beach, Christopher <beach.christopher@epa.gov>

> Cc: McFaul, Jessica <mcfaul.jessica@epa.gov>; White, Elizabeth <white.elizabeth@epa.gov>

> Subject: RE: Water

>

> Of course, please find the letter attached. The date needs to be amended.

>

> -----Original Message-----

> From: Schiermeyer, Corry <schiermeyer.corry@epa.gov>

> Sent: Wednesday, September 25, 2019 10:49 AM

> To: Block, Molly <block.molly@epa.gov>; Beach, Christopher <beach.christopher@epa.gov>; Mejias, Melissa <mejias.melissa@epa.gov>

> Cc: McFaul, Jessica <mcfaul.jessica@epa.gov>; White, Elizabeth <white.elizabeth@epa.gov>

> Subject: RE: Water

>

> Mel...could you send us all what you sent Beth?

>

> -----Original Message-----

> From: Block, Molly <block.molly@epa.gov>

> Sent: Wednesday, September 25, 2019 10:48 AM

> To: Beach, Christopher <beach.christopher@epa.gov>; Schiermeyer, Corry <schiermeyer.corry@epa.gov>

> Cc: McFaul, Jessica <mcfaul.jessica@epa.gov>

> Subject: RE: Water

>

> Can you forward my way so I can get cracking on a script for susan?

>

> -----Original Message-----

> From: Beach, Christopher

> Sent: Wednesday, September 25, 2019 10:06 AM

> To: Schiermeyer, Corry <schiermeyer.corry@epa.gov>

> Cc: McFaul, Jessica <mcfaul.jessica@epa.gov>; Block, Molly <block.molly@epa.gov>

> Subject: Re: Water

>

> I sent it home with AW last night. Trying to figure out if he looked at it yet.

>

> Sent from my iPhone

>

>> On Sep 25, 2019, at 8:59 AM, Schiermeyer, Corry <schiermeyer.corry@epa.gov> wrote:

>>

>> Do we have an updated water release with quote?

>>

>> Molly needs it. I will get her the final letter.

>>

>> Sent from my iPhone

>>

>>> On Sep 24, 2019, at 10:29 AM, McFaul, Jessica <mcfaul.jessica@epa.gov> wrote:

>>>

>>> This is the most recent version of the release that I edited and sent

>>> back to Doug, based on AAW's comments below. Doug could say whether

>>> AAW has seen this version. Jess

>>>

>>> -----Original Message-----

>>> From: McFaul, Jessica

>>> Sent: Monday, September 23, 2019 1:31 PM

>>> To: Benevento, Douglas <benevento.douglas@epa.gov>

>>> Cc: Schiermeyer, Corry <schiermeyer.corry@epa.gov>

>>> Subject: RE: Water

>>>
>>> Edits incorporated (plus one more from me for consideration). Looping
>>> Corry for her awareness. Jess
>>>
>>> -----Original Message-----
>>> From: Benevento, Douglas <benevento.douglas@epa.gov>
>>> Sent: Monday, September 23, 2019 12:10 PM
>>> To: McFaul, Jessica <mcfaul.jessica@epa.gov>
>>> Subject: FW: Water
>>>
>>>
>>>
>>> -----Original Message-----
>>> From: adm15.arwheeler.email <adm15.arwheeler.email@epa.gov>
>>> Sent: Monday, September 23, 2019 11:36 AM
>>> To: Benevento, Douglas <benevento.douglas@epa.gov>; Jackson, Ryan
>>> <jackson.ryan@epa.gov>
>>> Subject: Water
>>>
>>> On press release, my quote after obligation add a parenthetical
>>> (receiving its delegated authority in 19XX)
>>>
>>> Last sentence of quite has a typo, rewrite it to say
>>>
>>> "If California does not step up to its delegated responsibilities then EPA will be forced to take
actions."
>>>
>>> Sent from my iPhone
>>> <09-23-2019 - DRAFT RELEASE - Water letter to CA AAW EDITS.docx>

Message

From: Shimkin, Martha [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=179C76DD15584E87AF889201656C9F9F-SHIMKIN, MARTHA]
Sent: 8/12/2019 1:43:30 PM
To: Sylvester, Francis [Sylvester.Francis@epa.gov]
Subject: FW: IMPORTANT -- need response by tomorrow afternoon

In case I did not share – we decided to hold this until Monday. Sally has the lead for it. I think. I'll double-check with her.

Martha Shimkin
Acting Deputy Director
Office of Wastewater Management
(202) 564-1573

From: Shimkin, Martha
Sent: Thursday, August 08, 2019 3:26 PM
To: Sylvester, Francis <Sylvester.Francis@epa.gov>
Subject: Re: IMPORTANT -- need response by tomorrow afternoon

Excellent. I want to take a little more time to read it but I can send later today or tomorrow. I will mention that I have a list of the cities but not share unless requested

Thanks for this.

Sent from my iPhone

On Aug 8, 2019, at 2:43 PM, Sylvester, Francis <Sylvester.Francis@epa.gov> wrote:

Here is the list, courtesy of Jackie Clark, if needed at any point in time.

Frank Sylvester
U.S. Environmental Protection Agency
Office of Wastewater Management
Desk: (202) 564-1279
Mobile: Ex. 6 Personal Privacy (PP)
sylvester.francis@epa.gov

From: Shimkin, Martha <Shimkin.Martha@epa.gov>
Sent: Thursday, August 08, 2019 1:59 PM
To: Sylvester, Francis <Sylvester.Francis@epa.gov>
Subject: Re: IMPORTANT -- need response by tomorrow afternoon

I could just say that we have access to them if wanted.

Sent from my iPhone

On Aug 8, 2019, at 1:55 PM, Sylvester, Francis <Sylvester.Francis@epa.gov> wrote:

I think we could, yes. Do you want them first or do you want to send what we have now and follow up (and I can work concurrently with WPD to pull out those cities into a list)?

Frank Sylvester

U.S. Environmental Protection Agency
Office of Wastewater Management
Desk: (202) 564-1279
Mobile: Ex. 6 Personal Privacy (PP)
sylvester.francis@epa.gov

From: Shimkin, Martha <Shimkin.Martha@epa.gov>
Sent: Thursday, August 08, 2019 1:54 PM
To: Sylvester, Francis <Sylvester.Francis@epa.gov>
Subject: Re: IMPORTANT -- need response by tomorrow afternoon

Do you know if we can get the names of cities or towns for number 3. ?

Sent from my iPhone

On Aug 8, 2019, at 1:47 PM, Sylvester, Francis <Sylvester.Francis@epa.gov> wrote:

Martha,

Attached is a set of answers from WPD for your review before passing along to Lee.

Below is the text from the attachment:

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Frank Sylvester
U.S. Environmental Protection Agency
Office of Wastewater Management
Desk: (202) 564-1279
Mobile: Ex. 6 Personal Privacy (PP)
sylvester.francis@epa.gov

From: Shimkin, Martha <Shimkin.Martha@epa.gov>
Sent: Wednesday, August 07, 2019 10:04 AM
To: Sylvester, Francis <Sylvester.Francis@epa.gov>; Farris, Erika D. <Farris.Erika@epa.gov>
Subject: RE: IMPORTANT -- need response by tomorrow afternoon

Thanks. If they need to connect with the region, just let me know and I'll talk with Lee.

Martha Shimkin
Acting Deputy Director
Office of Wastewater Management
(202) 564-1573

From: Sylvester, Francis <Sylvester.Francis@epa.gov>
Sent: Wednesday, August 07, 2019 9:54 AM
To: Shimkin, Martha <Shimkin.Martha@epa.gov>; Farris, Erika D. <Farris.Erika@epa.gov>
Subject: RE: IMPORTANT -- need response by tomorrow afternoon

These seem fine but we don't think we'll have all the answers. I can direct WPD to connect with Enforcement. Sending along momentarily...

Frank Sylvester
U.S. Environmental Protection Agency
Office of Wastewater Management
Desk: (202) 564-1279
Mobile: Ex. 6 Personal Privacy (PP)
sylvester.francis@epa.gov

From: Shimkin, Martha <Shimkin.Martha@epa.gov>
Sent: Wednesday, August 07, 2019 9:49 AM

To: Sylvester, Francis <Sylvester.Francis@epa.gov>; Farris, Erika D. <Farris.Erika@epa.gov>

Subject: IMPORTANT -- need response by tomorrow afternoon

Can one of you work with WPD to pull together answers I response to an Administrator question on CA and compliance? The questions below are what Lee asked. Take a look before sending to WPD to make sure they make sense? We may be able to provide better clarity in the questions.

The Administrator was asked by CA Congressional delegation, about CSO/SSOs out of compliance. Lee Forsgren asked OWM to provide a response on the following questions. He asked for this by tomorrow afternoon and that **Ex. 5 Deliberative Process (DP)** Let me know if that is an issue. If we intend to **Ex. 5 Deliberative Process (DP)**

Ex. 5 Deliberative Process (DP)

1. **Ex. 5 Deliberative Process (DP)**
- 2.
- 3.
- 4.

This is a request for high-level response that will be used to discuss with the Administrator or share with the Administrator.

Let me know if you have questions.

Thanks.

Martha Shimkin
Acting Deputy Director
Office of Wastewater Management
(202) 564-1573

<California Compliance Questions.docx>

<CA 4952 Current Compliance Status SNC Only.xlsx>

Message

From: Schiermeyer, Corry [schiermeyer.corry@epa.gov]
Sent: 10/29/2019 9:42:59 PM
To: Bodine, Susan [bodine.susan@epa.gov]; Benevento, Douglas [benevento.douglas@epa.gov]; Voyles, Travis [Voyles.Travis@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]; Brazauskas, Joseph [brazauskas.joseph@epa.gov]
CC: Rodrick, Christian [rodrick.christian@epa.gov]; Frye, Tony (Robert) [frye.robert@epa.gov]; Carter, Brittany S. [carter.brittany@epa.gov]; Cory, Preston [Cory.Preston@epa.gov]; Willey, Katharine [willey.katharine@epa.gov]
Subject: RE: CA Delegation Letters

This should address our points...until we are ready to send official responses.

EPA Spokesperson:

EPA is reviewing the responses from California to our oversight letters on their failures to comply with the Clean Water Act and the Safe Drinking Water Act, as well as their failure to submit approvable State Implementation Plans that would bring them into attainment with federal air quality standards. Because California has the worst air quality in the nation along with other serious environmental challenges, we stand ready to assist the State in addressing these very serious concerns to ensure the protection of public health and the environment for all Californians. As is evident from the October 2, 2019, Notice of Violation sent to the San Francisco Public Utility Commission, EPA also is ready to step in to address the approximately one and a half billion gallons of combined sewage annually discharged onto beaches and other sensitive areas, including areas where recreation takes place.

Background note: California leads the nation with backlogged SIPs and we have made it a priority to eliminate this backlog which have built up over many years.

See below...California currently has 127 backlogged SIPs. Arizona has the second most with 36.

State	Number of Backlogged SIPs
AK	1
AL	1
AZ	36
CA	127
CO	1
CT	5
DC	1
DE	2
FL	4
GA	4
IA	7
ID	1
IL	2
IN	7
KS	2
KY	8
LA	2
MA	6
MD	3
MI	2

MN	1
MO	4
MS	2
MT	3
NC	8
ND	4
NE	5
NH	3
NJ	12
NM	3
NV	5
NY	18
OH	3
OK	8
OR	5
PA	9
RI	1
SC	11
SD	1
TN	4
TX	4
UT	12
VA	2
VT	3
WA	1
WI	5
WV	3
WY	2

From: Bodine, Susan <bodine.susan@epa.gov>

Sent: Tuesday, October 29, 2019 5:38 PM

To: Benevento, Douglas <benevento.douglas@epa.gov>; Schiermeyer, Corry <schiermeyer.corry@epa.gov>; Voyles, Travis <Voyles.Travis@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>; Brazauskas, Joseph <brazauskas.joseph@epa.gov>

Cc: Rodrick, Christian <rodrick.christian@epa.gov>; Frye, Tony (Robert) <frye.robert@epa.gov>; Carter, Brittany S. <carter.brittanys@epa.gov>; Cory, Preston <Cory.Preston@epa.gov>; Willey, Katharine <willey.katharine@epa.gov>

Subject: RE: CA Delegation Letters

From: Benevento, Douglas <benevento.douglas@epa.gov>

Sent: Tuesday, October 29, 2019 5:27 PM

To: Schiermeyer, Corry <schiermeyer.corry@epa.gov>; Voyles, Travis <Voyles.Travis@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Brazauskas, Joseph <brazauskas.joseph@epa.gov>

Cc: Rodrick, Christian <rodrick.christian@epa.gov>; Frye, Tony (Robert) <frye.robert@epa.gov>; Carter, Brittany S. <carter.brittanys@epa.gov>; Cory, Preston <Cory.Preston@epa.gov>; Willey, Katharine <willey.katharine@epa.gov>

Subject: RE: CA Delegation Letters

My thoughts. Please edit as you see fit.

From: Schiermeyer, Corry <schiermeyer.corry@epa.gov>

Sent: Tuesday, October 29, 2019 4:52 PM

To: Voyles, Travis <Voyles.Travis@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Benevento, Douglas <benevento.douglas@epa.gov>; Brazauskas, Joseph <brazauskas.joseph@epa.gov>

Cc: Rodrick, Christian <rodrick.christian@epa.gov>; Frye, Tony (Robert) <frye.robert@epa.gov>; Carter, Brittany S. <carter.brittany@epa.gov>; Cory, Preston <Cory.Preston@epa.gov>; Willey, Katharine <willey.katharine@epa.gov>

Subject: RE: CA Delegation Letters

In the mean time, this is what we are proposing using to reply until we have an official response:

- EPA is reviewing the responses from California to our oversight letters related to the public health concerns arising from their implementation of the Clean Water Act and the Safe Drinking Water Act, as well as their failure to submit ~~any~~ approvable State Implementation Plans that would bring them into attainment with federal air quality standards. Indeed California leads the nation with backlogged SIPs and we have made it a priority to eliminate this backlog which have built up over many years. Because California has the worst air quality in the nation along with other serious environmental challenges, and we stand ready to assist the State in addressing these very serious concerns to ensure the protection of public health and the environment for all Californians. As is evident from the October 2, 2019, Notice of Violation sent to the San Francisco Public Utility Commission, EPA also is ready to step in to address the approximately one and a half billion gallons of combined sewage annually discharged onto beaches and other sensitive areas, including areas where recreation takes place.

From: Voyles, Travis <Voyles.Travis@epa.gov>

Sent: Tuesday, October 29, 2019 4:46 PM

To: Forsgren, Lee <Forsgren.Lee@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Benevento, Douglas <benevento.douglas@epa.gov>; Schiermeyer, Corry <schiermeyer.corry@epa.gov>; Brazauskas, Joseph <brazauskas.joseph@epa.gov>

Cc: Rodrick, Christian <rodrick.christian@epa.gov>; Frye, Tony (Robert) <frye.robert@epa.gov>; Carter, Brittany S. <carter.brittany@epa.gov>; Cory, Preston <Cory.Preston@epa.gov>; Willey, Katharine <willey.katharine@epa.gov>

Subject: RE: CA Delegation Letters

Hey Everyone—OPA just got a press inquiry about California's response to the Agency's actions and a 10/25 letter from CalEPA was referenced along with the letter from SF Water and CARB that I have previously provided.

I'm checking on this 10/25 CalEPA letter to ensure it is processed and claimed by my oversight team the same as the previous ones, but this was the first I had seen of it. I've attached a copy of it here for your reference.

Travis Voyles
(202) 564-6399

From: Voyles, Travis

Sent: Monday, October 14, 2019 5:00 PM

To: Forsgren, Lee <Forsgren.Lee@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Benevento, Douglas <benevento.douglas@epa.gov>

Cc: Rodrick, Christian <rodrick.christian@epa.gov>; Frye, Tony (Robert) <frye.robert@epa.gov>; Carter, Brittany S.

<carter.brittanys@epa.gov>; Cory, Preston <Cory.Preston@epa.gov>; Willey, Katharine <willey.katharine@epa.gov>

Subject: RE: CA Delegation Letters

Another one from last week—specifically about the SIPs from CARB/Mary Nichols.

Travis Voyles
(202) 564-6399

From: Voyles, Travis

Sent: Friday, October 11, 2019 5:47 PM

To: Forsgren, Lee <Forsgren.Lee@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Benevento, Douglas <benevento.douglas@epa.gov>

Cc: Rodrick, Christian <rodrick.christian@epa.gov>; Frye, Tony (Robert) <frye.robert@epa.gov>; Carter, Brittany S. <carter.brittanys@epa.gov>

Subject: RE: CA Delegation Letters

Somehow missed this one along with the former EPA employees/EIP one—This one is also from EIP, but directed at AW.

Includes a list of 429 major sources in significant noncompliance because of either violating their discharge limits in their permits or failing to meet deadlines for complying with permit conditions or consent decrees.

Travis Voyles
(202) 564-6399

From: Forsgren, Lee <Forsgren.Lee@epa.gov>

Sent: Thursday, October 10, 2019 5:52 PM

To: Voyles, Travis <Voyles.Travis@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Benevento, Douglas <benevento.douglas@epa.gov>

Cc: Rodrick, Christian <rodrick.christian@epa.gov>; Frye, Tony (Robert) <frye.robert@epa.gov>; Carter, Brittany S. <carter.brittanys@epa.gov>

Subject: RE: CA Delegation Letters

Travis,
Had not seen the letter. Thanks for bringing it to my attention.

Regards,
Lee

From: Voyles, Travis <Voyles.Travis@epa.gov>

Sent: Thursday, October 10, 2019 5:48 PM

To: Bodine, Susan <bodine.susan@epa.gov>; Benevento, Douglas <benevento.douglas@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>

Cc: Rodrick, Christian <rodrick.christian@epa.gov>; Frye, Tony (Robert) <frye.robert@epa.gov>; Carter, Brittany S. <carter.brittanys@epa.gov>

Subject: RE: CA Delegation Letters

Wanted to flag another letter—former EPA employees (through EIP) to the House Committee on Oversight and Reform calling for an investigation.

Travis Voyles
(202) 564-6399

From: Voyles, Travis
Sent: Thursday, October 10, 2019 1:13 PM
To: Bodine, Susan <bodine.susan@epa.gov>; Benevento, Douglas <benevento.douglas@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>
Cc: Rodrick, Christian <rodrick.christian@epa.gov>; Frye, Tony (Robert) <frye.robert@epa.gov>; Carter, Brittany S. <carter.brittany@epa.gov>
Subject: RE: CA Delegation Letters

Just wanted to make sure everyone saw the new incoming from Speaker Pelosi and Rep. Speier to the OIG.

Travis Voyles
(202) 564-6399

From: Voyles, Travis
Sent: Wednesday, October 9, 2019 1:20 PM
To: Bodine, Susan <bodine.susan@epa.gov>
Cc: Rodrick, Christian <rodrick.christian@epa.gov>; Frye, Tony (Robert) <frye.robert@epa.gov>; Carter, Brittany S. <carter.brittany@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>; Benevento, Douglas <benevento.douglas@epa.gov>
Subject: RE: CA Delegation Letters

Perfect—That works with us. Thanks Susan.

Travis Voyles
(202) 564-6399

From: Bodine, Susan <bodine.susan@epa.gov>
Sent: Wednesday, October 9, 2019 1:18 PM
To: Voyles, Travis <Voyles.Travis@epa.gov>
Cc: Rodrick, Christian <rodrick.christian@epa.gov>; Frye, Tony (Robert) <frye.robert@epa.gov>; Carter, Brittany S. <carter.brittany@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>; Benevento, Douglas <benevento.douglas@epa.gov>
Subject: RE: CA Delegation Letters

Don't control it to OECA because it will be a month before I see it again. I can work with Lee on a first draft of a response.

Susan

From: Voyles, Travis <Voyles.Travis@epa.gov>
Sent: Wednesday, October 9, 2019 11:04 AM
To: Bodine, Susan <bodine.susan@epa.gov>
Cc: Rodrick, Christian <rodrick.christian@epa.gov>; Frye, Tony (Robert) <frye.robert@epa.gov>; Carter, Brittany S.

<carter.brittanys@epa.gov>

Subject: FW: CA Delegation Letters

Hey Susan—Just wanted to pass along these incoming letters the Agency has received over the past few weeks from the California delegation. I'm sure you've seen most of these but I just wanted to have them all in one place. OW wanted to briefly chat about the 10/7 letter today so I am going to do that, but my plan was initially to get your input on the development of a response to the 10/7 letter.

- 10/7 Letter from the California House delegation Dems (45 total) to Wheeler
- 10/3 Letter from Sens. Feinstein and Harris to EPA Office of Inspector General
- 9/27 Letter from Sen. Feinstein to EPA OIG
- 9/27 Letter from ECOS to Wheeler

Let me know if you have time to discuss or have any thoughts on OECA taking first pen for a response to the 10/7 letter.

Travis Voyles
(202) 564-6399

From: Benevento, Douglas <benevento.douglas@epa.gov>

Sent: Tuesday, October 8, 2019 9:21 PM

To: Voyles, Travis <Voyles.Travis@epa.gov>

Cc: Rodrick, Christian <rodrick.christian@epa.gov>; Frye, Tony (Robert) <frye.robert@epa.gov>

Subject: RE: CA Delegation Letters

Thanks. I'm out until next Tuesday, let's catch up then. Talk to OW and make sure Susan has a copy of these letters as well. I would like to review our responses before we send on to the Administrator.

Thanks again Travis.

From: Voyles, Travis <Voyles.Travis@epa.gov>

Sent: Tuesday, October 8, 2019 7:15 PM

To: Benevento, Douglas <benevento.douglas@epa.gov>

Cc: Rodrick, Christian <rodrick.christian@epa.gov>; Frye, Tony (Robert) <frye.robert@epa.gov>

Subject: CA Delegation Letters

Hey Doug—

Just wanted to pass along a couple of letters the Agency has received over the past few days from Members of the California delegation on air and water enforcement issues.

- 10/7 Letter from the California House delegation Dems (45 total) to Wheeler
- 10/3 Letter from Sens. Feinstein and Harris to EPA Office of Inspector General

I have a call planned tomorrow with OW to discuss the response to the 10/7 from the CA House delegation, but more than willing to sit down and discuss with you if you want.

--

Travis Voyles
Deputy Associate Administrator
Office of Congressional and Intergovernmental Relations
U.S. Environmental Protection Agency
O: (202) 564-6399
C: Ex. 6

Message

From: Dennis, Allison [Dennis.Allison@epa.gov]
Sent: 10/29/2019 8:38:11 PM
To: Millett, John [Millett.John@epa.gov]; Schiermeyer, Corry [schiermeyer.corry@epa.gov]; Jones, Enesta [Jones.Enesta@epa.gov]
CC: Grantham, Nancy [Grantham.Nancy@epa.gov]; Hackel, Angela [Hackel.Angela@epa.gov]; Risley, David [Risley.David@epa.gov]; Fuld, John [Fuld.John@epa.gov]; Hull, George [Hull.George@epa.gov]; Egan, Patrick [egan.patrick@epa.gov]; Drinkard, Andrea [Drinkard.Andrea@epa.gov]; Richardson, RobinH [Richardson.RobinH@epa.gov]; Voyles, Travis [Voyles.Travis@epa.gov]; Press [Press@epa.gov]; DeLuca, Isabel [DeLuca.Isabel@epa.gov]
Subject: RE: Media query re CalEPA letter
Attachments: 10.25.19CalEPAletter.pdf

Here's a PDF of the 10.25.19 letter

From: Millett, John <Millett.John@epa.gov>
Sent: Tuesday, October 29, 2019 4:33 PM
To: Dennis, Allison <Dennis.Allison@epa.gov>; Schiermeyer, Corry <schiermeyer.corry@epa.gov>; Jones, Enesta <Jones.Enesta@epa.gov>
Cc: Grantham, Nancy <Grantham.Nancy@epa.gov>; Hackel, Angela <Hackel.Angela@epa.gov>; Risley, David <Risley.David@epa.gov>; Fuld, John <Fuld.John@epa.gov>; Hull, George <Hull.George@epa.gov>; Egan, Patrick <egan.patrick@epa.gov>; Drinkard, Andrea <Drinkard.Andrea@epa.gov>; Richardson, RobinH <Richardson.RobinH@epa.gov>; Voyles, Travis <Voyles.Travis@epa.gov>; Press <Press@epa.gov>; DeLuca, Isabel <DeLuca.Isabel@epa.gov>
Subject: RE: Media query re CalEPA letter

Checking for OAR as well.

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Sent: Tuesday, October 29, 2019 4:26 PM
To: Schiermeyer, Corry <schiermeyer.corry@epa.gov>; Jones, Enesta <Jones.Enesta@epa.gov>
Cc: Grantham, Nancy <Grantham.Nancy@epa.gov>; Hackel, Angela <Hackel.Angela@epa.gov>; Risley, David <Risley.David@epa.gov>; Fuld, John <Fuld.John@epa.gov>; Hull, George <Hull.George@epa.gov>; Egan, Patrick <egan.patrick@epa.gov>; Drinkard, Andrea <Drinkard.Andrea@epa.gov>; Richardson, RobinH <Richardson.RobinH@epa.gov>; Voyles, Travis <Voyles.Travis@epa.gov>; Press <Press@epa.gov>; DeLuca, Isabel <DeLuca.Isabel@epa.gov>; Millett, John <Millett.John@epa.gov>
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Have we actually receive the letters? If so, then some form of a holding statement.

DRAFT: EPA is reviewing the responses from California to our oversight letters on their failures to comply with the Clean Water Act and the Safe Drinking Water Act, as well as their failure to submit any approvable State Implementation Plans that would bring them into air quality attainment.

Thank you!

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Subject: Re: Media query re CalEPA letter

There is a separate inquiry that involves OW & OAR — from Route Fifty:

I'm working on a follow up story regarding the EPA's letters to California about air quality and water quality violations. Now that California has submitted responses to both letters, what sort of timeframe will the EPA work under to evaluate their responses? Can you describe what the next steps will be?

My deadline for this is 3pm today.

Thanks.

--

Andrea Noble

Reporter - Route Fifty

On Oct 29, 2019, at 4:18 PM, Schiermeyer, Corry <schiermeyer.corry@epa.gov> wrote:

This looks to be on the water letter. OW should be able to start working up answers. Especially to these:

Has EPA approved the updated NPDES permit for San Francisco's oceanside discharges? Is there a timeline or is it under review? The local water board approved it in September. The state said it also needs federal approval. Can you confirm that?

In the 9.26 letter, the administrator said Marin county exceeded its limits for cyanide. The state said there has not been a violation for eight years. Can you explain the discrepancy?

Let's find out if we have the letter. If we have not received it, then we need to respond...and I think we could say:

EPA has not received the letter. As we noted in our letter to Governor Newsom, in order to ensure that appropriate steps are being taken by the State of California to protect the 40 million Americans living in the state, EPA is asking for a remedial plan from the state detailing the steps it's taking to address the multitude of issues raised in our letter. California's challenges with compliance with the Safe Drinking Water Act have been an ongoing concern and were brought to the attention of the Administrator by Representative Barragan at a House hearing. EPA stands ready to assist the State to correct these deficiencies, and protect Californians from degraded water.

From: Grantham, Nancy <Grantham.Nancy@epa.gov>

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Cc: Jones, Enesta <Jones.Enesta@epa.gov>; Drinkard, Andrea <Drinkard.Andrea@epa.gov>; Richardson, RobinH <Richardson.RobinH@epa.gov>; Voyles, Travis <Voyles.Travis@epa.gov>; Press <Press@epa.gov>; DeLuca, Isabel <DeLuca.Isabel@epa.gov>; Millett, John <Millett.John@epa.gov>

Subject: RE: Media query re CalEPA letter

All .. we need to have OAR/OCIR/OW coordinate on some sort of response to this inquiry.

Thanks ng

From: Dennis, Allison <Dennis.Allison@epa.gov>

Sent: Tuesday, October 29, 2019 2:05 PM

To: Hackel, Angela <Hackel.Angela@epa.gov>; Risley, David <Risley.David@epa.gov>; Fuld, John <Fuld.John@epa.gov>; Hull, George <Hull.George@epa.gov>; Egan, Patrick <egan.patrick@epa.gov>

Cc: Jones, Enesta <Jones.Enesta@epa.gov>; Grantham, Nancy <Grantham.Nancy@epa.gov>; Drinkard, Andrea <Drinkard.Andrea@epa.gov>

Subject: RE: Media query re CalEPA letter

Angela- we got another press q via Enesta on CA's response letter. I'm waiting to hear back if the agency has received this letter through our formal channels yet. We can't respond if we haven't received it yet...

From: Hackel, Angela <Hackel.Angela@epa.gov>

Sent: Tuesday, October 29, 2019 2:03 PM

To: Dennis, Allison <Dennis.Allison@epa.gov>; Risley, David <Risley.David@epa.gov>; Fuld, John <Fuld.John@epa.gov>; Hull, George <Hull.George@epa.gov>; Egan, Patrick <egan.patrick@epa.gov>

Subject: Fwd: Media query re CalEPA letter

Hello,

We received the below inquiry, the deadline is 6 pm. Please let me know how OW/OECA would like to respond.

Thanks!

Angela

Angela Hackel
Senior Advisor
Office of Public Affairs

Office of the Administrator
U.S. Environmental Protection Agency
Office: 202.566.2977
Cell: **Ex. 6**

Begin forwarded message:

Resent-From: <Press@epa.gov>
From: "Dooley, Emily" <edooley@bloombergenvironment.com>
Date: October 29, 2019 at 1:43:30 PM EDT
To: Press <Press@epa.gov>, "Jones, Enesta" <Jones.Enesta@epa.gov>, "Block, Molly" <block.molly@epa.gov>
Subject: Media query re CalEPA letter

Hi,
Hope you are well.
California's EPA Secretary responded to the Sept. 26 letter from Administrator Wheeler regarding Clean Water Act Concerns.
This is the letter: <http://src.bna.com/MpX>
The state said EPA is retreating from its core mission to protect clean water and safe drinking water. It also said several assertions by EPA were unfounded, misguided and sensationalized.
Is that something you can respond to?

Also I have specific questions:
Has EPA approved the updated NPDES permit for San Francisco's oceanside discharges? Is there a timeline or is it under review? The local water board approved it in September. The state said it also needs federal approval. Can you confirm that?
In the 9.26 letter, the administrator said Marin county exceeded its limits for cyanide. The state said there has not been a violation for eight years. Can you explain the discrepancy?
My deadline is 6 p.m. EST
Thanks, Emily
x x x x x x x x x x x x x x x x

Emily C. Dooley
California Staff Correspondent | Environment & Energy

Bloomberg Environment

571.255.0086
edooley@bloombergenvironment.com
 Twitter: eDooleyNoted

Message

From: Voyles, Travis [Voyles.Travis@epa.gov]
Sent: 10/29/2019 8:30:00 PM
To: Dennis, Allison [Dennis.Allison@epa.gov]; Schiermeyer, Corry [schiermeyer.corry@epa.gov]; Jones, Enesta [Jones.Enesta@epa.gov]
CC: Grantham, Nancy [Grantham.Nancy@epa.gov]; Hackel, Angela [Hackel.Angela@epa.gov]; Risley, David [Risley.David@epa.gov]; Fuld, John [Fuld.John@epa.gov]; Hull, George [Hull.George@epa.gov]; Egan, Patrick [egan.patrick@epa.gov]; Drinkard, Andrea [Drinkard.Andrea@epa.gov]; Richardson, RobinH [Richardson.RobinH@epa.gov]; Press [Press@epa.gov]; DeLuca, Isabel [DeLuca.Isabel@epa.gov]; Millett, John [Millett.John@epa.gov]
Subject: RE: Media query re CalEPA letter
Attachments: 2019-10-01 SF Water-EPA (CWA Violations).pdf; 2019-10-09 CARB-EPA (California SIPs).pdf

These are the only letters that I have from “California”—if you consider SF Water and CARB as California responding. Otherwise, I would like to know what responses are being referred to.

Travis Voyles
(202) 564-6399

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Office: 202.566.2977
Cell: Ex. 6

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Thanks, Emily

Emily C. Dooley

California Staff Correspondent | Environment & Energy

Bloomberg Environment

571.255.0086

edooley@bloombergenvironment.com

Twitter: eDooleyNoted

Status / Actions taken Talking Points on Non-WRDA topics

401 – water quality certification

- On August 8, we proposed a new regulation to modernize and clarify the timeline and scope of CWA section 401 certification review and action consistent with the plain language of the CWA.
- The comment period just ended on October 21. We look forward to reviewing public comments on the proposal and finalizing the rule by the end of May next year.

404g – state assumption of the 404-permitting program

- The EPA has initiated a rulemaking to modernize our existing assumption regulations to reduce barriers for states and tribes to assume the Section 404 permitting program.
- We expect to issue a proposed rule **in 2020**.
- We are also actively working with states and tribes that have expressed an interest in assumption.

404c – permit veto authority

- The EPA is evaluating possible changes to the CWA Section 404(c) regulations.
- We are looking at the use of 404(c) pre-permit application and post-permit issuance.
- Our Spring 2019 regulatory agenda anticipates putting out a proposal for public comment **by the end of 2019**.

Blending/Peak Flows

- EPA is looking at changes to our regulations to ensure both: (1) the effective operation of wastewater treatment plants and (2) meeting environmental and public health goals.
- We have received significant input from the public for the last 2 years. We are evaluating this input and the latest technical and public health information to inform a proposed rule.
- Our Spring 2019 regulatory agenda anticipates a proposed rule **by the end of this year**.

California Oversight

- At a House Energy and Commerce hearing last year, Administrator Wheeler was asked to look into concerns about drinking water in a CA community by a CA member.
- Following up on the Congresswoman's request, the EPA began to examine CA's implementation of the Safe Drinking Water Act and Clean Water Act.
- As part of the agency's review, shortcomings in California's programs were identified.
- Therefore, on September 26, the EPA sent a letter to CA identifying deficiencies and asking the state for a plan to address them.
- EPA's enforcement office also identified significant violations at a San Francisco wastewater treatment plant and sent them a notice of violation.

Chesapeake Bay

- EPA is committed to working with Congress as well as our federal and state partners to achieve our shared environmental goals for the Bay.
- The EPA is focused on supporting state efforts to develop and implement their Phase III Watershed Implementation Plans to meet their 2025 goals.
- The EPA has loaned money through the WIFIA program to Baltimore and several other Baltimore projects have been asked to apply for the latest round of WIFIA funding.

Integrated Planning/Ombudsman

- The EPA supports integrated planning and we are working with municipalities and states to incorporate integrated plans into National Pollutant Discharge Elimination System (NPDES) permits when possible and appropriate.
- The EPA is close to establishing the Office of the Municipal Ombudsman within the Administrator's Office to help municipalities with integrated planning as required by Water Infrastructure Improvement Act.

Nutrients

- "Different states have different needs and we want to be flexible to help each state make progress in ways that work best for them, their partners and their stakeholders" – Dave Ross
- "Focusing our efforts on local solutions and collaborative efforts is key as we make progress on improving water quality in this critical watershed." – Dave Ross

Major initiatives to reduce excess nutrients and improve water quality:

In August 2019, the EPA provided \$1.2 million to the 12 state members of the Hypoxia Task Force (HTF) to help implement state plans to reduce excess nutrients in the Mississippi River/Atchafalaya River Basin. Through this funding, EPA is promoting tailored and effective nutrient reduction efforts that are developed through state leadership in coordination with EPA.

In December 2018, EPA and U.S. Department of Agriculture (USDA) issued a letter to state co-regulators encouraging a reinvigoration of state, tribal and federal efforts to reduce excess nutrients in waterways, with a focus on market-based and other collaborative approaches.

In February 2019, EPA signed a Memorandum of Understanding with the Water Research Foundation to develop affordable technologies to recycle nutrients from livestock manure and also issued a new water quality trading policy memorandum intended to promote nutrient reductions and water quality improvements at a lower cost using market-based mechanisms.

On May 22, 2019, EPA issued new recommendations for water quality criteria and swimming advisory values for two cyanotoxins. EPA also published infographics for state and stakeholder use to help inform the public of what harmful algal blooms may look like and how to prevent exposure to humans and pets.

In July 2019, EPA released the Cyanobacteria Assessment Network (CyAN) mobile app, which uses satellite data to alert users that a harmful algal bloom could be forming based on specific

changes in the color of the water in more than 2,000 of the largest lakes and reservoirs across the United States.

In August 2019, the EPA announced awarding more than \$7.5 million in Farmer to Farmer Cooperative Agreements to fund projects that improve water quality, habitat and environmental education in the Gulf of Mexico watershed. These grants promote innovative, market-based solutions for monitoring and improving water quality while also maintaining a vital agricultural economy.

On August 21, EPA and four federal partners announced the winners of the Nutrient Sensor Action Challenge—a technology-accelerating water quality challenge that is focused on nutrient management. This year’s winners demonstrated how data from low cost water quality monitoring sensors can be used to inform local-scale nutrient management decisions.

Oil and Gas Study

- The study looks holistically at how the EPA, states, and stakeholders regulate and manage wastewater from the oil and gas industry.
- The study was designed to help the EPA better understand how existing federal approaches can interact more effectively with state and tribal regulations, and what requirements or policy updates might be needed to facilitate use of produced water.
- The EPA published the draft study in May 2019 and accepted public input through July 1, 2019.
- We are current reviewing the comments received and the EPA anticipates finalizing the study and announcing any next steps **at the end of this year or early next year.**

Pebble Mine (the Corps is the lead for answering)

- The EPA is evaluating the permit for the mine proposed by the Pebble Partnership in December 2017 through the regular NEPA and Section 404 processes. Those interactions are ongoing.
- On __, the EPA withdrew it’s six year old proposed determination to prohibit the discharge for the Bristol Bay , because it was based on hypothetical mine, but we now have a “real” mine application that is under review. EPA has been very active in providing comments at part of the current application process. here is a Region 10 letter that explains our rationale in detail.

Perchlorate

- The public comment period closed on August 26, 2019 and the EPA is carefully reviewing public comments to inform our final action.
- We have a court ordered deadline to finalize a rule by June 19, 2020.
- The EPA sought input on a range of options regarding the regulation of perchlorate in public drinking water systems.
 - An MCL and MCLG for perchlorate set at 18 micrograms per liter.
 - An MCL and MCLG for perchlorate set at 90 micrograms per liter.

- Withdrawal of the EPA's 2011 determination to regulate perchlorate in drinking water.

PFOA/PFOS MCL

- The EPA is committed to following the MCL rulemaking process as established by the Safe Drinking Water Act.
- The EPA plans to publish a proposed regulatory determination for PFOA and PFOS, the next step in the MCL process, **by the end of 2019**.
- The Agency is also gathering and evaluating information to determine if regulation is appropriate for other chemicals in the PFAS family.

PFAS Toxicity Assessments

- The EPA is currently reviewing the public comments received on the draft assessments for GenX and PFBS.
- The EPA intends to provide the final assessments for GenX and PFBS to states and communities **in 2020** to help inform their decisions and actions.
- The EPA is initiating work on toxicity assessments for five additional PFAS (PFBA, PFHxA, PFHxS, PFNA, and PFDA) and plans to release drafts of the five assessments for public comment **in 2020**.

Steam Electric

- We are conducting a rulemaking to potentially revise the 2015 Steam Electric ELG rule for 2 waste streams (flue gas desulfurization and bottom ash).
- We also issued a rule to delay the compliance dates for the 2015 rule until 2020 to prevent power plants from unnecessarily spending resources until the rulemaking on reconsideration is complete.
- The EPA commenced Interagency Review with OMB on the proposed revisions to the 2015 rule on August 16, 2019, and **we plan to publish a proposed rule soon**.
- The Agency is working to align the release of the proposed Coal Combustion Residual rule and the Steam Electric ELG rule as much as possible.

Trash Free Waters

- Administrator Wheeler recently said, "Removing trash, litter and garbage - including plastics - from marine and freshwater environments is one of EPA's highest priorities."
- The EPA is involved in both domestic and international partnerships to support trash pollution prevention programs.
- Building upon these domestic and international partnerships, the EPA hopes to expand the Trash Free Waters domestic program to be truly national in scope and to focus international efforts on marine litter hot spots.
- In July, Administrator Wheeler announced the Trash-Free Great Lakes Grant Program to fund efforts by communities and other applicants to clean up beaches and waterways so that the Great Lakes watershed will continue to provide habitat for wildlife and drinking water and

recreation for tens of millions of people.

Vessel Incidental Discharge Act

- The EPA and the Coast Guard are working together to develop national vessel discharge standards and implementing regulations.
- The EPA and the Coast Guard having been engaging with states throughout the rulemaking process, including consultation requirements, petitions, and applications for more stringent standards and no-discharge zones.
- Our Spring 2019 regulatory agenda anticipates a proposed rule **by early 2020**.

Water Reuse

- On September 10, the EPA released a draft National Water Reuse Action Plan that identifies priority actions all levels of government can take to bolster safe and reliable water supplies for human consumption, agriculture, business, industry, recreation and healthy ecosystems.
- The EPA wants to collaborate with all stakeholder groups on this plan and **we are soliciting public input through a 90-day public comment period that ends December 16, 2019**.

WOTUS (the Corps is the lead for answering)

- The Step 1 rule, that repeals the 2015 Rule and recodifies the pre-existing regulations, was finalized on September 12, 2019. This will provide for regulatory certainty by establishing a uniform set of regulations to replace the patchwork resulting from the ongoing litigation of the 2015 Rule.
- The EPA and the Army are reviewing and addressing the comments received (approx.. 620,000) on the proposed Step 2 rule to revise the definition of “waters of the U.S.”
- Our Spring 2019 regulatory agenda estimates completing the Step 2 rule **by the end of 2019**.

Yazoo (the Corps is the lead for answering)

- The EPA and the U.S. Army Corps of Engineers (Corps) are working together on a solution to the flooding in the Yazoo Backwater Area.

Columbia River

In process

Great Lakes

Add TPs from 10/22 announcement re: Great Lakes Action Plan and GLRI grants.

NPDES ID	Facility Site Name	Street Address	City	State	SIC Code	Facility Type
CA0022756	CRESCENT CITY WWTF	210 BATTERY STREET	CRESCENT CITY	CA	4952	POTW
CA0024449	ELK RIVER WWTP	4301 HILFIKER LN	EUREKA	CA	4952	POTW
CA0024490	MCKINLEYVILLE CSD WASTEWATER TREATMENT PLANT	675 HILLER ROAD	MCKINLEYVILLE	CA	4952	POTW
CA0038539	WEST COUNTY AGENCY COMMUNITY DEVELOPMENT CENTER	2910 HILLTOP DRIVE	RICHMOND	CA	4952	POTW
CA0047953	EL PASO DE ROBLES WWTP	3200 SULPHUR SPRINGS RD	PASO ROBLES	CA	4952	POTW
CA0049224	SAN LUIS OBISPO WRRF	35 PRADO RD	SAN LUIS OBISPO	CA	4952	POTW
CA0053597	CAMARILLO WRP	150 HOWARD RD	CAMARILLO	CA	4952	POTW
CA0053961	OJAI VALLEY WWTP	6363 NORTH VENTURA AVENUE	VENTURA	CA	4952	POTW
CA0054313	SAUGUS WRP	26200 SPRINGBROOK AVE	SANTA CLARITA	CA	4952	POTW
CA0056227	DONALD C. TILLMAN WRP	6100 WOODLEY AVENUE	VAN NUYS	CA	4952	POTW
CA0078981	AMERICAN VALLEY WWTP	900 SPANISH CREEK RD	QUINCY	CA	4952	POTW
CA0082589	STILLWATER WWTF	6475 AIRPORT RD	ANDERSON	CA	4952	POTW
CA0084271	MOUNTAIN HOUSE WWTP	17103 WEST BETHANY ROAD	MOUNTAIN HOUSE	CA	4952	POTW
CA0104523	BRAWLEY WWTP	5015 BEST RD	BRAWLEY	CA	4952	POTW
CA8000326	MICHELSON WRP	3512 MICHELSON DR	IRVINE	CA	4952	POTW
CA0023043	FORESTVILLE WATER DISTRICT V	6194 FORESTVILLE STREET	FORESTVILLE	CA	4952	POTW
CA0023051	OCCIDENTAL CSD WWTF	14445 OCCIDENTAL ROAD	OCCIDENTAL	CA	4952	POTW
CA0023639	GRATON CSD WWTF	250 ROSS LANE	SEBASTOPOL	CA	4952	POTW
CA0038016	ST. HELENA WWTRP	1 CHAIX / THOMANN LN	SAINT HELENA	CA	4952	POTW
CA0047902	SAN JUAN BAUTISTA WWTP	1120 THIRD STREET	SAN JUAN BAUTISTA	CA	4952	POTW
CA0048267	BIG BASIN REDWOODS SP WWTP	21600 BIG BASIN WAY	BOULDER CREEK	CA	4952	POTW
CA0078051	CITY OF MT. SHASTA WWTP	2500 GRANT ROAD	MOUNT SHASTA	CA	4952	POTW
CA0078930	BIGGS WWTP	3016 SIXTH STREET	BIGGS	CA	4952	POTW
CA0079464	SAN ANDREAS WWTP	675 GOLD OAK RD	SAN ANDREAS	CA	4952	POTW
CA0080489	STALLION SPRINGS WWTF	28500 STALLION SPRINGS DR	TEHACHAPI	CA	4952	POTW
CA0081744	DELLEKER WWTP	73821 INDUSTRIAL WAY	PORTOLA	CA	4952	POTW

Permit Status	State or EPA Issued	Individual Permit or General Permi	Permit Issuance Date	Major or Non-Major
Effective	State	NPDES Individual Permit	2/2/2017	Major
Effective	State	NPDES Individual Permit	6/16/2016	Major
Effective	State	NPDES Individual Permit	9/6/2018	Major
Effective	State	NPDES Individual Permit	2/13/2019	Major
Admin Continued	State	NPDES Individual Permit	5/5/2011	Major
Effective	State	NPDES Individual Permit	9/25/2014	Major
Admin Continued	State	NPDES Individual Permit	5/8/2014	Major
Effective	State	NPDES Individual Permit	12/13/2018	Major
Effective	State	NPDES Individual Permit	4/9/2015	Major
Effective	State	NPDES Individual Permit	3/2/2017	Major
Effective	State	NPDES Individual Permit	6/24/2016	Major
Effective	State	NPDES Individual Permit	5/31/2018	Major
Effective	State	NPDES Individual Permit	12/8/2017	Major
Effective	State	NPDES Individual Permit	6/11/2015	Major
Effective	State	NPDES Individual Permit	6/19/2015	Major
Effective	State	NPDES Individual Permit	7/11/2018	Non-Major
Admin Continued	State	NPDES Individual Permit	12/6/2012	Non-Major
Effective	State	NPDES Individual Permit	5/17/2018	Non-Major
Effective	State	NPDES Individual Permit	1/13/2016	Non-Major
Admin Continued	State	NPDES Individual Permit	5/8/2009	Non-Major
Admin Continued	State	NPDES Individual Permit	12/1/2011	Non-Major
Effective	State	NPDES Individual Permit	12/8/2017	Non-Major
Admin Continued	State	NPDES Individual Permit	10/4/2012	Non-Major
Effective	State	NPDES Individual Permit	10/5/2018	Non-Major
Effective	State	NPDES Individual Permit	10/10/2014	Non-Major
Effective	State	NPDES Individual Permit	6/7/2019	Non-Major

Permit Components

POTW, Pretreatment

POTW, Pretreatment

POTW

POTW, Pretreatment

POTW, Pretreatment

POTW, Pretreatment

POTW, Pretreatment

POTW, Pretreatment

POTW, Pretreatment

POTW, Pretreatment

POTW

POTW

POTW, Pretreatment

POTW, Pretreatment

POTW, Pretreatment, Storm Water Industrial

POTW

POTW

POTW

POTW

POTW

POTW

POTW

POTW

POTW

POTW

POTW

Most Recent Compliance Status

Significant/Category I Noncompliance

Significant/Category I Noncompliance

Significant/Category I Noncompliance

Significant/Category I Noncompliance

Significant/Category I Noncompliance

Significant/Category I Noncompliance

Significant/Category I Noncompliance

Significant/Category I Noncompliance

Significant/Category I Noncompliance

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Significant/Category I Noncompliance

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Significant/Category I Noncompliance

Significant/Category I Noncompliance

Significant/Category I Noncompliance

Significant/Category I Noncompliance

Significant/Category I Noncompliance

Significant/Category I Noncompliance

Significant/Category I Noncompliance

Current SNC Status Description

Failure to Report DMR - Not Received

Effluent - Monthly Average Limit

Effluent - Monthly Average Limit

Effluent - Monthly Average Limit

Effluent - Non-monthly Average Limit

Effluent - Non-monthly Average Limit

Effluent - Monthly Average Limit

Effluent - Monthly Average Limit

Effluent - Non-monthly Average Limit

Effluent - Non-monthly Average Limit

Effluent - Non-monthly Average Limit

Effluent - Non-monthly Average Limit

Effluent - Monthly Average Limit

Effluent - Monthly Average Limit

Failure to Report DMR - Not Received

Effluent - Monthly Average Limit

Effluent - Non-monthly Average Limit

Failure to Report DMR - Not Received

Effluent - Monthly Average Limit

Effluent - Monthly Average Limit

Failure to Report DMR - Not Received

Effluent - Monthly Average Limit

Effluent - Non-monthly Average Limit

Effluent - Monthly Average Limit

Effluent - Non-monthly Average Limit

Effluent - Monthly Average Limit

Date of the Current SNC Status	Quarters With Non-Compliance in last 3 years	Current Violation Status
3/31/2019		9 Yes
3/31/2019		12 Yes
3/31/2019		12 Yes
3/31/2019		4 Yes
3/31/2019		12 Yes
3/31/2019		12 Yes
3/31/2019		12 Yes
3/31/2019		11 Yes
3/31/2019		12 Yes
3/31/2019		11 Yes
3/31/2019		12 Yes
3/31/2019		12 Yes
3/31/2019		11 Yes
3/31/2019		11 Yes
3/31/2019		12 Yes
3/31/2019		7 Yes
3/31/2019		10 Yes
3/31/2019		9 Yes
3/31/2019		2 Yes
3/31/2019		2 Yes
3/31/2019		8 Yes
3/31/2019		10 Yes
3/31/2019		11 Yes
3/31/2019		7 Yes
3/31/2019		9 Yes
3/31/2019		9 Yes

Count of Quarters With SNC last 3 years

Count of Quarters with Missing DMR so Compliance Status Unknown in last 2 years

2	
6	
1	
2	
11	
5	
9	
1	
1	
2	
8	
1	
5	
3	
1	
3	
9	3
6	3
2	3
1	4
1	3
8	3
5	2
4	2
5	2
7	3

Count of Effluent Violations in last 3 years**Count of On Site Inspections in last 5 years**

13	4
38	5
6	2
25	4
47	4
12	3
81	4
15	2
11	4
29	
17	1
17	2
46	2
14	5
0	3
13	
35	1
12	3
22	1
18	2
18	1
105	
38	
10	1
37	
44	1

Count of Formal Enforcement Actions in past 5 years

DFR URL

https://echo.epa.gov/detailed-facility-report?fid=CA0022756&sys=ICP
3 https://echo.epa.gov/detailed-facility-report?fid=CA0024449&sys=ICP
https://echo.epa.gov/detailed-facility-report?fid=CA0024490&sys=ICP
https://echo.epa.gov/detailed-facility-report?fid=CA0038539&sys=ICP
3 https://echo.epa.gov/detailed-facility-report?fid=CA0047953&sys=ICP
2 https://echo.epa.gov/detailed-facility-report?fid=CA0049224&sys=ICP
2 https://echo.epa.gov/detailed-facility-report?fid=CA0053597&sys=ICP
https://echo.epa.gov/detailed-facility-report?fid=CA0053961&sys=ICP
1 https://echo.epa.gov/detailed-facility-report?fid=CA0054313&sys=ICP
2 https://echo.epa.gov/detailed-facility-report?fid=CA0056227&sys=ICP
2 https://echo.epa.gov/detailed-facility-report?fid=CA0078981&sys=ICP
1 https://echo.epa.gov/detailed-facility-report?fid=CA0082589&sys=ICP
3 https://echo.epa.gov/detailed-facility-report?fid=CA0084271&sys=ICP
https://echo.epa.gov/detailed-facility-report?fid=CA0104523&sys=ICP
https://echo.epa.gov/detailed-facility-report?fid=CA8000326&sys=ICP
1 https://echo.epa.gov/detailed-facility-report?fid=CA0023043&sys=ICP
https://echo.epa.gov/detailed-facility-report?fid=CA0023051&sys=ICP
https://echo.epa.gov/detailed-facility-report?fid=CA0023639&sys=ICP
3 https://echo.epa.gov/detailed-facility-report?fid=CA0038016&sys=ICP
https://echo.epa.gov/detailed-facility-report?fid=CA0047902&sys=ICP
https://echo.epa.gov/detailed-facility-report?fid=CA0048267&sys=ICP
2 https://echo.epa.gov/detailed-facility-report?fid=CA0078051&sys=ICP
2 https://echo.epa.gov/detailed-facility-report?fid=CA0078930&sys=ICP
1 https://echo.epa.gov/detailed-facility-report?fid=CA0079464&sys=ICP
https://echo.epa.gov/detailed-facility-report?fid=CA0080489&sys=ICP
1 https://echo.epa.gov/detailed-facility-report?fid=CA0081744&sys=ICP

Case	Referred to DOJ	Complaint filed with court	Final Order Lodged	Final Order Entered	Case Closed	IR	Penalty	SEP	Notes and Duration to meet CD
1. City of LA	Ex. 7(e)	1/8/2001	8/5/2004	10/28/2004	5/26/2015	\$2,000,000,000.00	\$1,600,000 (split with state)	\$7.7M for various projects	11 years
Amendment #1 – modified odor provision and replaced SEPs		8/20/2009	11/12/2009	\$6,940,000.00		-			
Amendment #2 – replaced certain SEPs		7/23/2013	1/3/2014	\$0.00		-			
<p><i>City of LA Background:</i> With approximately 6,500 miles of sewer lines serving almost 4 million residents, the city operates the largest sewage collection system in the country. From 1994-2004, the city experienced over 4,500 sewage spills.</p> <p><i>Inj Relief:</i> Rebuild at least 488 miles of sewer lines, clean 2,800 miles of sewers annually, enhance its program to control restaurant grease discharges, increase the sewage system's capacity, and plan for future expansion.</p>									
2. City of San Diego	Ex. 7(e)	7/8/2003	5/3/2004	9/13/2005	8/4/2015	\$187,000,000.00	\$6,200,000 (penalty went to the state)	\$250,000 for beach study	10 years
Round 2		8/15/2006	1/24/2007	\$87,000,000.00		-	No		
Round 3		7/31/2007	10/11/2007	\$876,000,000.00		-	No		
<p><i>San Diego IR:</i> System-wide cleaning, root control, sewer pipe inspection, repair or replacement of 250 miles of pipeline; Upgrade/repair pump stations and secure all 5,800 manhole covers throughout the city; and Create grease control blockage programs.</p>									
3. City and County of Honolulu	Ex. 7(e)	10/3/1994	-	5/15/1995	Open	\$3,700,000,000.00	\$1,600,000 (Split with State)	No	Work scheduled through 2035. 25 year duration.
Second CD		5/8/2007	8/10/2010	12/17/2010					
Amendment #1		9/15/2015	9/15/2015			-	-	No	
<p><i>CCH IR:</i> Upgrade wastewater collection system by 2020. Upgrade Sand Island and Honouliuli WWTPs to secondary treatment by 2038</p>									
4. EBMUD (collection system)	Ex. 7(e)	5/20/2013	7/28/2014	9/22/2014	Open	\$1,500,000,000.00	\$ 1,276,778.00	No	Work scheduled through 2035. 21 year duration.
<p><i>East Bay MUD Background:</i> Defendants: East Bay Municipal Utility District (EBMUD) and the seven member communities (Alameda, Albany, Berkeley, Emeryville, Oakland, Piedmont and Stege Sanitary District) EBMUD discharged large volumes of partially treated sewage to the SF Bay and East Bay communities contributed to these discharges because their sewer collection systems were defective and allowed rainwater into their systems and overwhelming capacity. The EBMUD communities also had overflows of raw sewage from their sewer systems onto the streets, which then flowed to the SF Bay and other nearby lakes, rivers, and streams.</p> <p><i>Inj Relief:</i> Rehabilitate 70% of the East Bay communities’ > 1,500 miles of sewer pipe. Eliminate discharges from wet weather facilities into the Bay by 2036</p>									